2014

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 11B

Titles 45 to 47

(As Revised 2011)

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By the Editorial Staff of the Publisher

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5464025

ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-4224-9451-6 (Volume 11B)

Matthew Bender & Company, Inc.

701 E. Water Street, Charlottesville, VA 22902-5389

www.lexisnexis.com

(Pub.44510)

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014 LexisNexis

SCHEDULE OF NEW SECTIONS

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ANNOTATED

VOLUME ELEVEN B

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CHAPTER 1

Department of Public Safety

General Provisions 45-1-1

GENERAL PROVISIONS

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45-1-47.	Department of Public Safety authorized to sell and replace as needed its fleet of aircraft; use of proceeds.

§ 45-1-2. Executive Director of Department of Public Safety to be commissioner; organization of department; Commissioner of Public Safety; statewide safety training officer.

Editor's Note — Laws of 2014, ch. 480, § 2, provides:

"SECTION 2. (1) The Department of Finance and Administration is authorized to partition, transfer and convey to the Mississippi Department of Public Safety, all of the rights, title and interest in certain real property and any improvements thereon located within the City of Hattiesburg, Forrest County, Mississippi, whereupon is currently situated the facility occupied by the Department of Public Safety and used as a District Substation.

"(2) The Department of Finance and Administration shall partition the existing parcel of real property, which now contains three (3) facilities, two (2) of which are maintained and operated by the Department of Finance and Administration Office of Capitol Facilities, and the remaining facility used for the purpose described in subsection (1) of this section. Upon partition of the property into two (2) parcels of property, the Department of Finance and Administration shall retain the portion thereof upon which is situated the facilities under its administration and used for its operation. The remaining parcel, as described in subsection (1) of this section, shall be transferred to the Department of Public Safety for its management, operations and maintenance. Such property being more particularly described as follows:

"A parcel of land located in the NE ¼ of the SE ¼ of Section 34, Township 4 North, Range 13 West, Forrest County, Mississippi, and being more particularly described as follows: Commence at a concrete marker found marking the NE corner of the said NE ¼ of the SE ¼, said point being on the southern right-of-way line of John Merl Tatum Industrial Drive; thence run North 89 degrees 52 minutes 40 seconds West along the north line of the said NE ¼ of the SE ¼ and along said southern right-of-way line for 111.62 feet to a crimp top pipe found, said point being the Point of Beginning; thence run South 00 degrees 14 minutes 28 seconds East for 456.18 feet to a crimp top pipe found; thence run South 89 degrees 33 minutes 01 seconds West for 341.44 feet to an iron pin found; thence run North 12 degrees 19 minutes 42 seconds West for 470.65 feet to an iron pin set on the said north line of the said NE ¼ of the SE ¼, said point also being on the said southern right-of-way line of said John Merl Tatum Industrial Drive; thence run South 89 degrees 52 minutes 40 seconds East along said north line and along said southern right-of-way line for 440.00 feet back to the Point of Beginning. Said parcel contains 4.11 acres, more or less.

"(3) The State of Mississippi shall retain all rights to minerals in the partitioned property transferred under subsection (1) of this section.

"(4) The Department of Finance and Administration is vested with the authority to correct any discrepancies in the legal description of the property described in subsection (2) of this section."

Laws of 2012, ch. 553, § 4 provides:

"SECTION 4. (1) The Department of Finance and Administration, acting on behalf of the Department of Public Safety, is authorized to transfer to the Board of Supervisors of Grenada County, Mississippi, certain real property that has been in the possession of and under the jurisdiction of the Department of Public Safety since 1942 which such deed was recorded on December 7, 1942, and upon which it currently operates a licensing station from a building located on the site, such property being more particularly described as follows:

"Being situated in the County of Grenada and the State of Mississippi, to wit:

"Lot 113 of Jackson Heights Subdivision of SE ¼ NE ¼ of NE ¼ SE ¼ of Section 19, Township 22 North, Range 5 East as same appears of record in Plat Book 1 at page 39 of the records of the Chancery Clerk's Office of said county.

"There is also granted with this deed a permit to place a guy pole or wire on Lot 107 of said subdivision with the distinct understanding that same will not interfere with any buildings now on said lot or to be erected on said lot.

"(2) The transfer of the real property described in subsection (1) of this section shall be contingent upon the County of Grenada entering into a written agreement with the Department of Public Safety to fund the construction of a new licensing station within the county.

"(3) The State of Mississippi shall retain all mineral rights to the real property transferred under this section."

§ 45-1-21. Department of Public Safety authorized to charge fees for services and reports.

(1)(a) The Mississippi Department of Public Safety being required by law to keep various records and perform various services and being authorized to furnish certain records and services, the department, by direction of the Commissioner of Public Safety, shall establish and collect for such services a proper fee, commensurate with the service rendered and the cost of the service for the furnishing of any record or abstract thereof in the Department of Public Safety now or which may hereafter be required by law to be kept by said department, any photograph or photo copy or any report of any kind authorized by law, including services for polygraph tests and reports thereof.

(b) No records shall be furnished by the Mississippi Department of Public Safety which are classified as confidential by law. All fees collected under this section shall be paid into the General Fund of the State Treasury in accordance with the provisions of Section 45-1-23(2).

(2)(a)(i) The Commissioner of Public Safety, by rule duly filed with the Secretary of State under the Administrative Procedures Act, may establish a card stock fee to be paid by an applicant when specifically authorized by statute for producing a license, permit or identification card bearing the likeness of the applicant. The card stock fee shall be the actual cost of producing the license, permit or identification card as set by contract rounded off to the next highest dollar.

(ii) The administrative rule filing shall include either:

1. A copy of the contract governing the actual cost of producing the license permit or identification card, from which nonpublic information may be redacted; or

2. An abstract of the pertinent parts of the contract verified to be correct by the person responsible for the administrative rule filing.

(b) Monies collected for the card stock fee shall be deposited into a special card stock fee account which the Department of Public Safety shall use to pay the actual cost of producing the licenses and identification cards. Any monies collected in excess of the actual costs of the card stock fee may be used by the department to defray the cost of future photography, fraud deterrence and driver's license technology initiatives. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

SOURCES: Codes, 1942, § 8120-7; Laws, 1962, ch. 513; Laws, 1976, ch. 396, § 3; Laws, 1991, ch. 356 § 1; Laws, 2014, ch. 424, § 1, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment deleted the third undesignated paragraph regarding monies deposited to the Department of Public Safety Administrative Fund, added (1) designation and (2); and substituted "the" for "said" and "the" for "such" in present (1)(a).

§ 45-1-37. Commissioner authorized to enter into reciprocal agreements with bordering states for purpose of entering such state to make arrest; commissioner to require Department of Public Safety to enter into Memorandum of Understanding with county registrars for purpose of providing Mississippi Voter Identification Card.

(1) The Commissioner of Public Safety is hereby authorized and directed to seek reciprocal agreements with bordering states to allow law enforcement officers of the State of Mississippi to enter into such bordering states while in pursuit of persons who have committed crimes for the purpose of apprehending and arresting such persons. Any state who enters into such reciprocal agreement shall be authorized to enter into the State of Mississippi for the same purpose.

(2) The Commissioner of Public Safety shall require the Department of Public Safety to enter into a Memorandum of Understanding, which is negotiated by the Secretary of State, with the registrar of each county for the purpose of providing a Mississippi Voter Identification Card.

SOURCES: Laws, 2000, ch. 339, § 1; Laws, 2012, ch. 526, § 9, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

Editor's Note — The effective date of the bill that amended this section, House Bill No. 921, 2012 Regular Session, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of Shelby County v. Holder (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the Shelby County decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. House Bill No. 921 was submitted to the United States Attorney General before the Shelby County decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of House Bill No. 921 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of House Bill No. 921, so House Bill No. 921 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Amendment Notes — The 2012 amendment inserted the (1) designator and added (2).

§ 45-1-47. Department of Public Safety authorized to sell and replace as needed its fleet of aircraft; use of proceeds.

Notwithstanding any provision to the contrary that may be found in Section 61-13-1 et seq., the Department of Public Safety is hereby authorized to sell any or all of its fleet of aircraft and replace the same with aircraft more suited to the needs of the department. The proceeds from the sale of such aircraft shall be retained by the Department of Public Safety to be used by the department to offset the cost of replacement aircraft purchased by the department and shall not be transferred to the State General Fund. However, in the event there are any proceeds remaining after the purchase of the replacement aircraft, the department shall transfer the remaining amounts to the State General Fund. The department is authorized to escalate its budget to expend the proceeds from the sale of the aircraft in a manner consistent with authorization granted in this section.

SOURCES: Laws, 2013, ch. 547, § 2, eff from and after July 1, 2013.

CHAPTER 2

Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds

Article 1.	Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	45-2-1
Article 2.	Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	45-2-21

Article 1.

Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund.

Sec.	
45-2-1.	Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

§ 45-2-1. Definitions; establishment of death benefits trust fund; payments from fund; administration of fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau or agency, or a county, municipality or other political subdivision of

the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime, whether the officer is on regular duty on full-time status, an auxiliary or reserve officer, or is serving on a temporary or part-time status.

(2)(a) The Department of Public Safety shall make a payment, as provided in this section, in the amount of One Hundred Thousand Dollars ($100,000.00) when a covered individual, while engaged in the performance of the person's official duties, is accidentally or intentionally killed or receives accidental or intentional bodily injury that results in the loss of the covered individual's life, provided that the killing is not the result of suicide and that the bodily injury is not intentionally self-inflicted.

(b) The payment provided for in this subsection shall be made to the beneficiary who was designated in writing by the covered individual, signed by the covered individual and delivered to the employer during the covered individual's lifetime. If no such designation is made, then the payment shall be made to the surviving child or children and spouse in equal portions, and if there is no surviving child or spouse, then to the parent or parents. If a beneficiary is not designated and there is no surviving child, spouse or parent, then the payment shall be made to the covered individual's estate.

(c) The payment made in this subsection is in addition to any workers' compensation or pension benefits and is exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund. The trust fund shall be funded by an initial appropriation of Two Hundred Thousand Dollars ($200,000.00), and shall be comprised of any additional funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Department of Public Safety shall be responsible for the management of the trust fund and the disbursement of death benefits authorized under this section. The Department of Public Safety shall adopt rules and regulations necessary to implement and standardize the payment of death benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section.

SOURCES: Laws, 1999, ch. 500, § 1; Laws, 2001, ch. 507, § 1; Laws, 2002, ch. 355, § 1; Laws, 2004, ch. 410, § 2; Laws, 2007, ch. 429, § 1; Laws, 2013, ch. 385, § 4; Laws, 2014, ch. 437, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2013, ch. 385, § 6, provides:

"This act shall take effect and be in force from and after its passage; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies or self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act."

Amendment Notes — The 2013 amendment in (1)(a), inserted "including volunteer firefighters" following "officer or firefighter," and deleted the former last sentence which read: "'Covered individual' also includes volunteer fire fighters."

The 2014 amendment, in (2)(a), substituted "One Hundred Thousand Dollars ($100,000.00)" for "Sixty-five Thousand Dollars ($65,000.00)" and "covered individual" for "law enforcement officer"; deleted (2)(b); and redesignated remaining subsections accordingly.

Cross References — Transfer of funds from uninsured motorist identification fund to cover insufficient funds in law enforcement officers and fire fighters death benefits trust fund, see § 63-16-13.

ARTICLE 2.

LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS DISABILITY BENEFITS TRUST FUND.

SEC.

45-2-21. Definitions; establishment of disability benefits trust fund; payments from fund; administration of fund.

§ 45-2-21. Definitions; establishment of disability benefits trust fund; payments from fund; administration of fund.

(1) Whenever used in this section, the term:

(a) "Covered individual" means a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section while actively engaged in protecting the lives and property of the citizens of this state when employed by an employer as defined in this section; it does not include employees of independent contractors.

(b) "Employer" means a state board, commission, department, division, bureau, or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

(c) "Firefighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and

perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

(d) "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime.

(2)(a) The Attorney General's office shall make a monthly disability benefit payment equal to thirty-four percent (34%) of the covered individual's regular base salary at the time of injury when a covered individual, while engaged in the performance of the individual's official duties, is accidentally or intentionally injured in the line of duty as a direct result of a single incident. The benefit shall be payable for the period of time the covered individual is physically unable to perform the duties of the covered individual's employment, not to exceed twelve (12) total payments for any one (1) injury. Chronic or repetitive injury is not covered. Benefits made available under this section shall be in addition to any workers' compensation benefits and shall be limited to the difference between the amount of workers' compensation benefits and the amount of the covered individual's regular base salary. Compensation under this section shall not be awarded where a penal violation committed by the covered individual contributed to the disability or the injury was intentionally self-inflicted.

(b) Payments made under this subsection are exempt from the claims and demands of creditors of the covered individual.

(3)(a) There is established in the State Treasury a special fund to be known as the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund. The trust fund shall be funded by any funds made available by the Legislature or by donation, contribution, gift or any other source.

(b) The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the funds of the Public Employees' Retirement System under Section 25-11-121, and those investments shall be subject to the limitations prescribed by Section 25-11-121.

(c) Unexpended amounts remaining in the trust fund at the end of the state fiscal year shall not lapse into the State General Fund, and any income earned on amounts in the trust fund shall be deposited to the credit of the trust fund.

(4) The Attorney General's office shall be responsible for the management of the trust fund and the disbursement of disability benefits authorized under this section. The Attorney General shall adopt rules and regulations necessary to implement and standardize the payment of disability benefits under this section, to administer the trust fund created by this section and to carry out the purposes of this section. The Attorney General's office may expend up to ten percent (10%) of the monies in the trust fund for the administration and management of the trust fund and carrying out the purposes of this section.

SOURCES: Laws, 2005, ch. 406, § 1; Laws, 2006, ch. 581, § 1; Laws, 2013, ch. 385, § 5, eff from and after passage (approved Mar. 20, 2013.)

Editor's Note — Laws of 2013, ch. 385, § 6, provides:
"This act shall take effect and be in force from and after its passage; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies or self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act."

Amendment Notes — The 2013 amendment inserted "including volunteer firefighters" in (1)(a).

CHAPTER 3

Highway Safety Patrol

SEC.

45-3-9. Qualifications of members of Highway Safety Patrol; agents of Mississippi Bureau of Narcotics employed as enforcement troopers.

§ 45-3-9. Qualifications of members of Highway Safety Patrol; agents of Mississippi Bureau of Narcotics employed as enforcement troopers.

(1) The chief of patrol, directors, inspectors, assistant inspectors, patrol officers and investigators of the department shall be selected after an examination as to physical and mental fitness, knowledge of traffic laws, rules and regulations of this state, the laws of the state pertaining to arrest, and the rules and regulations of the Mississippi Department of Public Safety and Public Service Commission, such examination to be prescribed by the commissioner. At the time of appointment they shall be citizens of the United States and the State of Mississippi, of good moral character, and shall be not less than twenty-one (21) years of age and shall have:

(a) Sixty (60) hours and/or an associate degree from an accredited educational institution with a minimum grade point average of 2.0 on a 4.0 scale; or

(b) A high school diploma or High School Equivalency Diploma and at least four (4) years of active military duty or six (6) years of National Guard duty; a Department of Defense Form 214 (DD214), Certificate of Release or Discharge from Active Duty, or a National Guard Bureau Form 22 (NGB Form 22), Report of Separation, or a National Guard Bureau Form 23 (NGB Form 23), ARNG Retirement Credit Points Statement must be submitted by the applicant; or

(c) A high school diploma or High School Equivalency Diploma, minimum standard certification from an accredited law enforcement academy and a minimum of one (1) year of law enforcement field experience; or

(d) A high school diploma or High School Equivalency Diploma if the applicant is not less than twenty-three (23) years of age.

(2) Sworn agents of the Mississippi Bureau of Narcotics who are employed as enforcement troopers shall retain all compensatory, personal and sick leave accrued pursuant to Sections 25-3-92, 25-3-93 and 25-3-95.

SOURCES: Codes, 1942, §§ 8079, 8086; Laws, 1938, ch. 143; Laws, 1940, ch. 167; Laws, 1944, ch. 330, § 1; Laws, 1946, ch. 420, § 2; Laws, 1948, ch. 343, § 2; Laws, 1950, ch. 407, § 1; Laws, 1952, ch. 357, § 1; Laws, 1956, ch. 377 § 1; Laws, 1960, ch. 338, § 1; Laws, 1962, ch. 515; Laws, 1962, ch. 516; Laws, 1964, ch. 324, § 9; Laws, 1964, ch. 453, § 1; Laws, 1966, ch. 568, § 1; Laws, 1968, ch. 472, § 1; Laws, 1970, ch. 482; Laws, 1971, ch. 518, § 1; Laws, 1972, ch. 527, § 1; Laws, 1973, ch. 485, § 1; Laws, 1980, ch. 561, § 21; Laws, 1981, ch. 511, § 3; Laws, 1984, ch. 518, § 3; Laws, 1991, ch. 468 § 2; Laws, 1998, ch. 442, § 1; Laws, 2010, ch. 550, § 3; Laws, 2011, ch. 503, § 1; Laws, 2012, ch. 561, § 1; Laws, 2014, ch. 398, § 14, eff from and after July 1, 2014.

Amendment Notes — The 2012 amendment deleted the former last sentence of (1)(d), which read: "This paragraph (d) shall stand repealed on January 1, 2012."

The 2014 amendment substituted "High School Equivalency Diploma" for "GED" in (1)(b), (1)(c), and (1)(d).

CHAPTER 4

County Jail Officers Training Program

SEC.

45-4-3. Board on Jail Officer Standards and Training; creation; membership; officers; reports.

§ 45-4-3. Board on Jail Officer Standards and Training; creation; membership; officers; reports.

(1) There is hereby created the Board on Jail Officer Standards and Training, which shall consist of nine (9) members.

(2) The members shall be appointed as follows:

(a) Two (2) members to be appointed by the Mississippi Association of Supervisors.

(b) Three (3) members to be appointed by the Mississippi Association of Sheriffs.

(c) One (1) member to be appointed by the Mississippi Community College Board.

(d) One (1) member to be appointed by the Governor.

(e) One (1) member to be appointed by the Mississippi Association of Chiefs of Police.

(f) One (1) member to be appointed by the Mississippi Municipal League.

The initial appointments to the board shall be made no later than twenty (20) days after July 1, 1999, as follows:

The Mississippi Association of Supervisors shall appoint one (1) member for a term of one (1) year and one (1) member for a term of three (3) years.

The Mississippi Association of Sheriffs shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years and one (1) member for a term of three (3) years.

The Mississippi Community College Board shall appoint one (1) member for a term of two (2) years.

The Governor shall appoint one (1) member for a term of two (2) years.

The Mississippi Association of Chiefs of Police shall appoint one (1) member for a term of two (2) years not later than twenty (20) days after July 1, 2000.

The Mississippi Municipal League shall appoint one (1) member for a term of two (2) years not later than twenty (20) days after July 1, 2000.

Upon the expiration of the terms of the initial appointees to the board, each subsequent appointment shall be made for a term of three (3) years, beginning on the date of the expiration of the previous term. A vacancy in any appointed position on the board prior to the expiration of a term shall be filled by appointment for the balance of the unexpired term.

(3) Members of the board shall serve without compensation, but shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to such service, including mileage, as provided in Section 25-3-41, Mississippi Code of 1972.

(4) There shall be a chairman and a vice chairman of the board, elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business, but the board shall meet at least every three (3) months. Any member who is absent for three (3) consecutive regular meetings of the board may be removed by a majority vote of the board.

(5) The Governor shall call an organizational meeting of the board not later than thirty (30) days after July 1, 1999.

(6) The board shall report annually to the Governor and the Legislature on its activities, and may make such other reports as it deems desirable.

SOURCES: Laws, 1999, ch. 482, § 2; Laws, 2000, ch. 515, § 5; Laws, 2014, ch. 397, § 60, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (2)(c) and in the fourth undesignated paragraph in (f).

CHAPTER 6

Law Enforcement Officers Training Program

SEC.

45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.
45-6-13. Reimbursement for attending training program; professional library.
45-6-21. Motorcycle Officers Training Program Fund created.

§ 45-6-11. Law enforcement officer qualifications; recertification after leaving law enforcement; certification; reprimand, suspension or revocation of certification.

(1) Law enforcement officers already serving under permanent appointment on July 1, 1981, and personnel of the Division of Community Services

under Section 47-7-9, Mississippi Code of 1972, serving on July 1, 1994, shall not be required to meet any requirement of subsections (3) and (4) of this section as a condition of continued employment; nor shall failure of any such law enforcement officer to fulfill such requirements make that person ineligible for any promotional examination for which that person is otherwise eligible. Provided, however, if any law enforcement officer certified under the provisions of this chapter leaves his employment as such and does not become employed as a law enforcement officer within two (2) years from the date of termination of his prior employment, he shall be required to comply with board policy as to rehiring standards in order to be employed as a law enforcement officer; except, that, if any law enforcement officer certified under this chapter leaves his employment as such to serve as a sheriff, he may be employed as a law enforcement officer after he has completed his service as a sheriff without being required to comply with board policy as to rehiring standards. Part-time law enforcement officers serving on or before July 1, 1998, shall have until July 1, 2001, to obtain certification as a part-time officer.

(2)(a) Any person who has twenty (20) years of law enforcement experience and who is eligible to be certified under this section shall be eligible for recertification after leaving law enforcement on the same basis as someone who has taken the basic training course. Application to the board to qualify under this paragraph shall be made no later than June 30, 1993.

(b) Any person who has twenty-five (25) years of law enforcement experience, whether as a part-time, full-time, reserve or auxiliary officer, and who has received certification as a part-time officer, may be certified as a law enforcement officer as defined in Section 45-6-3(c) without having to meet further requirements. Application to the board to qualify under this paragraph shall be made no later than June 30, 2009.

(3)(a) No person shall be appointed or employed as a law enforcement officer or a part-time law enforcement officer unless that person has been certified as being qualified under the provisions of subsection (4) of this section.

(b) No person shall be appointed or employed as a law enforcement trainee in a full-time capacity by any law enforcement unit for a period to exceed one (1) year. No person shall be appointed or employed as a law enforcement trainee in a part-time, reserve or auxiliary capacity by any law enforcement unit for a period to exceed two (2) years. The prohibition against the appointment or employment of a law enforcement trainee in a full-time capacity for a period not to exceed one (1) year or a part-time, reserve or auxiliary capacity for a period not to exceed two (2) years may not be nullified by terminating the appointment or employment of such a person before the expiration of the time period and then rehiring the person for another period. Any person, who, due to illness or other events beyond his control, could not attend the required school or training as scheduled, may serve with full pay and benefits in such a capacity until he can attend the required school or training.

(c) No person shall serve as a law enforcement officer in any full-time, part-time, reserve or auxiliary capacity during a period when that person's

certification has been suspended, cancelled or recalled pursuant to the provisions of this chapter.

(4) In addition to the requirements of subsections (3), (7) and (8) of this section, the board, by rules and regulations consistent with other provisions of law, shall fix other qualifications for the employment of law enforcement officers, including minimum age, education, physical and mental standards, citizenship, good moral character, experience and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements. Additionally, the board shall fix qualifications for the appointment or employment of part-time law enforcement officers to essentially the same standards and requirements as law enforcement officers. The board shall develop and implement a part-time law enforcement officer training program that meets the same performance objectives and has essentially the same or similar content as the programs approved by the board for full-time law enforcement officers and the board shall provide that such training shall be available locally and held at times convenient to the persons required to receive such training.

(5) Any elected sheriff, constable, deputy or chief of police may apply for certification. Such certification shall be granted at the request of the elected official after providing evidence of satisfaction of the requirements of subsections (3) and (4) of this section. Certification granted to such elected officials shall be granted under the same standards and conditions as established by law enforcement officers and shall be subject to recall as in subsection (7) of this section.

(6) The board shall issue a certificate evidencing satisfaction of the requirements of subsections (3) and (4) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the board for approved law enforcement officer education and training programs in this state, and has satisfactorily passed any and all diagnostic testing and evaluation as required by the board to ensure competency.

(7) Professional certificates remain the property of the board, and the board reserves the right to either reprimand the holder of a certificate, suspend a certificate upon conditions imposed by the board, or cancel and recall any certificate when:

(a) The certificate was issued by administrative error;

(b) The certificate was obtained through misrepresentation or fraud;

(c) The holder has been convicted of any crime involving moral turpitude;

(d) The holder has been convicted of a felony;

(e) The holder has committed an act of malfeasance or has been dismissed from his employing law enforcement agency; or

(f) Other due cause as determined by the board.

(8) When the board believes there is a reasonable basis for either the reprimand, suspension, cancellation of, or recalling the certification of a law

enforcement officer or a part-time law enforcement officer, notice and opportunity for a hearing shall be provided in accordance with law prior to such reprimand, suspension or revocation.

(9) Any full- or part-time law enforcement officer aggrieved by the findings and order of the board may file an appeal with the chancery court of the county in which such person is employed from the final order of the board. Such appeals must be filed within thirty (30) days of the final order of the board.

(10) Any full- or part-time law enforcement officer whose certification has been cancelled pursuant to this chapter may reapply for certification, but not sooner than two (2) years after the date on which the order of the board cancelling such certification becomes final.

SOURCES: Laws, 1981, ch. 474, § 6; Laws, 1990, ch. 434, § 3; Laws, 1992, ch. 415, § 1; Laws, 1993, ch. 584, § 1; Laws, 1994, ch. 516, § 2; Laws, 1998, ch. 394, § 3; Laws, 1999, ch. 506, § 1; Laws, 2009, ch. 539, § 2; Laws, 2013, ch. 425, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment in (3)(b), inserted "in a full-time capacity" and substituted "one (1) year" for "two (2) years" in the first sentence, added the second sentence, and inserted "in a full-time capacity for a period not to exceed one (1) year or a part-time, reserve or auxiliary capacity" in the third sentence.

JUDICIAL DECISIONS

3. Suspension or revocation of certification.

Chancery court exceeded its authority in reversing a decision of the Board on Law Enforcement Officer Standards and Training for the Mississippi Department of Public Safety recalling a police officer's law enforcement certificate under Miss. Code Ann. § 45-6-11 nine years after the officer pled guilty to a felony charge of embezzlement for pawning police department guns because the Board was within its authority to recall the certificate and substantial evidence supported its recall decision. Miss. Dep't of Pub. Safety Bd. on Law Enforcement Officer Stds. & Training v. Johnson, — So. 3d —, 2010 Miss. App. LEXIS 688 (Miss. Ct. App. June 21, 2010).

§ 45-6-13. Reimbursement for attending training program; professional library.

(1) The board shall establish, provide or maintain law enforcement training programs through such agencies and institutions as the board may deem appropriate.

(2) The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the reimbursement to each political subdivision and to state agencies of at least fifty percent (50%) of the allowable salary and allowable tuition, living and travel expense incurred by law enforcement officers in attendance at approved training programs, provided said political subdivisions and state agencies do in fact adhere to the selection and training standards established by the board. The board shall authorize, but only from such funds authorized and appropriated by the Legislature, the direct funding of a part-time law enforcement officer training program. The board shall

require the payment of a reasonable tuition fee to aid in funding the costs of administering the part-time law enforcement officer training program.

(3) The board is authorized to expend funds for the purpose of providing a professional library and training aids that will be available to state agencies and political subdivisions.

(4) If any full- or part-time law enforcement officer in this state who is employed by a municipality, county or other governmental entity shall, within three (3) years after the date of his employment, resign from, or be terminated from, employment by such entity and immediately become employed by another governmental entity in a law enforcement capacity, then the governmental entity by which the resigned or terminated officer is employed shall reimburse the governmental entity from which the officer resigned or was terminated a proportionate share of the officer's law enforcement training expenses which were incurred by such entity, if any.

(5) The Mississippi Board on Law Enforcement Officer Standards and Training shall reimburse each county for the expenses incurred by sheriffs and deputy sheriffs for attendance at approved training programs as provided in Section 25-3-25.

SOURCES: Laws, 1981, ch. 474, § 7; Laws, 1993, ch. 458, § 1; Laws, 1998, ch. 394, § 4; Laws, 2014, ch. 323, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (5).

§ 45-6-21. Motorcycle Officers Training Program Fund created.

There is created in the State Treasury a special fund to be known as the Motorcycle Officers Training Program Fund, which shall be administered by the Office of the Attorney General. The purpose of the fund shall be to provide funding for the training of state and local law enforcement officers, including, but not limited to, motorcycle officers training. All courses provided under the Motorcycle Officers Training Program shall be administered and approved by the Mississippi Law Enforcement Officers Association. Monies in the fund shall be expended by the Attorney General, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Motorcycle Officers Training Program;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

SOURCES: Laws, 2012, ch. 554, § 2, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 554, § 6 provides:

"SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

"University of Mississippi Medical Center for the Children's Justice Center $750,000.00

"Board of Trustees of State Institutions of Higher Learning for the DuBard School for Language Disorders $300,000.00

"Attorney General's office for the Children's Advocacy Centers of Mississippi $650,000.00

"Attorney General's office for the Motorcycle Officers Training Program $50,000.00

"The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Adminstration in a manner consistent with the escalation of federal funds."

This note was set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 9

Weapons

Restrictions Upon Local Regulation of Firearms or Ammunition 45-9-51
License to Carry Concealed Pistol or Revolver 45-9-101
Purchase of Sidearms by Retiring Law Enforcement Personnel 45-9-131

RESTRICTIONS UPON LOCAL REGULATION OF FIREARMS OR AMMUNITION

SEC.

45-9-51. Prohibition against adoption of certain ordinances.
45-9-53. Exceptions; procedure for challenging ordinances; county or municipal programs to purchase weapons from citizens.

§ 45-9-51. Prohibition against adoption of certain ordinances.

(1) Subject to the provisions of Section 45-9-53, no county or municipality may adopt any ordinance that restricts the possession, carrying, transportation, sale, transfer or ownership of firearms or ammunition or their components.

(2) No public housing authority operating in this state may adopt any rule or regulation restricting a lessee or tenant of a dwelling owned and operated by such public housing authority from lawfully possessing firearms or ammunition or their components within individual dwelling units or the transportation of such firearms or ammunition or their components to and from such dwelling.

SOURCES: Laws, 1986, ch. 471, § 1; Laws, 2014, ch. 443, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (2); in present (1), deleted "or requires" following "any ordinance that restricts" and inserted "carrying" following "the possession."

§ 45-9-53. Exceptions; procedure for challenging ordinances; county or municipal programs to purchase weapons from citizens.

(1) This section and Section 45-9-51 do not affect the authority that a county or municipality may have under another law:

(a) To require citizens or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;

(b) To regulate the discharge of firearms within the limits of the county or municipality. A county or municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the county or municipality or in an area annexed by the county or municipality after September 1, 1981, if the firearm or other weapon is:

(i) A shotgun, air rifle or air pistol, BB gun or bow and arrow discharged:

1. On a tract of land of ten (10) acres or more and more than one hundred fifty (150) feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(ii) A center fire or rim fire rifle or pistol or a muzzle-loading rifle or pistol of any caliber discharged:

1. On a tract of land of fifty (50) acres or more and more than three hundred (300) feet from a residence or occupied building located on another property; and

2. In a manner not reasonably expected to cause a projectile to cross the boundary of the tract;

(c) To regulate the use of property or location of businesses for uses therein pursuant to fire code, zoning ordinances, or land-use regulations, so long as such codes, ordinances and regulations are not used to circumvent the intent of Section 45-9-51 or paragraph (e) of this subsection;

(d) To regulate the use of firearms in cases of insurrection, riots and natural disasters in which the city finds such regulation necessary to protect the health and safety of the public. However, the provisions of this section shall not apply to the lawful possession of firearms, ammunition or components of firearms or ammunition;

(e) To regulate the storage or transportation of explosives in order to protect the health and safety of the public, with the exception of black powder which is exempt up to twenty-five (25) pounds per private residence and fifty (50) pounds per retail dealer;

(f) To regulate the carrying of a firearm at: (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event; or

(g) To regulate the receipt of firearms by pawnshops.

(2) The exception provided by subsection (1)(f) of this section does not apply if the firearm was in or carried to and from an area designated for use in a lawful hunting, fishing or other sporting event and the firearm is of the type commonly used in the activity.

(3) This section and Section 45-9-51 do not authorize a county or municipality or their officers or employees to act in contravention of Section 33-7-303.

(4) No county or a municipality may use the written notice provisions of Section 45-9-101(13) to prohibit firearms on property under their control except in the locations listed in subsection (1)(f) of this section. Nothing in this subsection shall limit the ability of a county or municipality to post signs:

(a) At a location listed in Section 45-9-101(13) indicating that a license issued under Section 45-9-101 does not authorize the holder to carry a firearm into that location, as long as the sign also indicates that carrying a firearm is unauthorized only for license holders without a training endorsement or that it is a location included in Section 97-37-7(2) where carrying a firearm is unauthorized for all license holders; and

(b) At any location under the control of the county or municipality aside from a location listed in subsection (1)(f) of this section or Section 45-9-101(13) indicating that the possession of a firearm is prohibited on the premises, as long as the sign also indicates that it does not apply to a person properly licensed under Section 45-9-101 or Section 97-37-7(2) to carry a concealed firearm or to a person lawfully carrying a firearm that is not concealed.

(5)(a) A citizen of this state, or a person licensed to carry a concealed pistol or revolver under Section 45-9-101, or a person licensed to carry a concealed pistol or revolver with the endorsement under Section 97-37-7, who is adversely affected by an ordinance or posted written notice adopted by a county or municipality in violation of this section may file suit for declarative and injunctive relief against a county or municipality in the circuit court which shall have jurisdiction over the county or municipality where the violation of this section occurs.

(b) Before instituting suit under this subsection, the party adversely impacted by the ordinance or posted written notice shall notify the Attorney General in writing of the violation and include evidence of the violation. The Attorney General shall, within thirty (30) days, investigate whether the county or municipality adopted an ordinance or posted written notice in violation of this section and provide the chief administrative officer of the county or municipality notice of his findings, including, if applicable, a description of the violation and specific language of the ordinance or posted written notice found to be in violation. The county or municipality shall have thirty (30) days from receipt of that notice to cure the violation. If the county or municipality fails to cure the violation within that thirty-day time period, a suit under paragraph (a) of this subsection may proceed. The findings of the Attorney General shall constitute a "Public Record" as defined by the Mississippi Public Records Act of 1983, Section 25-61-1 et seq.

(c) If the circuit court finds that a county or municipality adopted an ordinance or posted written notice in violation of this section and failed to

cure that violation in accordance with paragraph (b) of this subsection, the circuit court shall issue a permanent injunction against a county or municipality prohibiting it from enforcing the ordinance or posted written notice. Any elected county or municipal official under whose jurisdiction the violation occurred may be civilly liable in a sum not to exceed One Thousand Dollars ($1,000.00), plus all reasonable attorney's fees and costs incurred by the party bringing the suit. Public funds may not be used to defend or reimburse officials who are found by the court to have violated this section.

(d) It shall be an affirmative defense to any claim brought against an elected county or municipal official under this subsection (5) that the elected official:

(i) Did not vote in the affirmative for the adopted ordinance or posted written notice deemed by the court to be in violation of this section;

(ii) Did attempt to take recorded action to cure the violation as noticed by the Attorney General in paragraph (b) of this subsection; or

(iii) Did attempt to take recorded action to rescind the ordinance or remove the posted written notice deemed by the court to be in violation of this section.

(6) No county or municipality or their officers or employees may participate in any program in which individuals are given a thing of value provided by another individual or other entity in exchange for surrendering a firearm to the county, municipality or other governmental body unless:

(a) The county or municipality has adopted an ordinance authorizing the participation of the county or municipality, or participation by an officer or employee of the county or municipality in such a program; and

(b) Any ordinance enacted pursuant to this section must require that any firearm received shall be offered for sale at auction as provided by Sections 19-3-85 and 21-39-21 to federally licensed firearms dealers, with the proceeds from such sale at auction reverting to the general operating fund of the county, municipality or other governmental body. Any firearm remaining in possession of the county, municipality or other governmental body after attempts to sell at auction may be disposed of in a manner that the body deems appropriate.

SOURCES: Laws, 1986, ch. 471, § 2; Laws, 2006, ch. 450, § 1; Laws, 2014, ch. 443, § 4, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1)(b)(ii)2, inserted "the" following "to cross the boundary of"; in (1)(c), substituted "paragraph" for "subparagraph" and "subsection" for "section" at the end; in (1)(d), substituted "ammunition or components of firearms or ammunition" for "in the home, place of business or in transit to and from the home or place of business"; and added (3), (4), (5), and (6).

LICENSE TO CARRY CONCEALED PISTOL OR REVOLVER

SEC.

45-9-101. License to carry stun gun, concealed pistol or revolver.
45-9-103. Federal firearm reporting.

§ 45-9-101. License to carry stun gun, concealed pistol or revolver.

(1)(a) The Department of Public Safety is authorized to issue licenses to carry stun guns, concealed pistols or revolvers to persons qualified as provided in this section. Such licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person possessing a valid license issued pursuant to this section may carry a stun gun, concealed pistol or concealed revolver.

(b) The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by summons.

(2) The Department of Public Safety shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for twelve (12) months or longer immediately preceding the filing of the application. However, this residency requirement may be waived, provided the applicant possesses a valid permit from another state, is active military personnel stationed in Mississippi, or is a retired law enforcement officer establishing residency in the state;

(b)(i) Is twenty-one (21) years of age or older; or

(ii) Is at least eighteen (18) years of age but not yet twenty-one (21) years of age and the applicant:

1. Is a member or veteran of the United States Armed Forces; and

2. Holds a valid Mississippi driver's license or identification card with the "Veteran" designation issued by the Department of Public Safety;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a stun gun, pistol or revolver;

(d) Is not ineligible to possess a firearm by virtue of having been convicted of a felony in a court of this state, of any other state, or of the United States without having been pardoned for same;

(e) Does not chronically or habitually abuse controlled substances to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses controlled substances to the extent that his faculties are impaired if the applicant has been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance or been found guilty of a crime under the provisions of the Uniform Controlled Substances Law or similar laws of any other state or the United States relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages to the extent

that his normal faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under the laws of this state or similar laws of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself;

(h) Has not been adjudicated mentally incompetent, or has waited five (5) years from the date of his restoration to capacity by court order;

(i) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of five (5) years;

(j) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled;

(k) Is not a fugitive from justice; and

(*l*) Is not disqualified to possess a weapon based on federal law.

(3) The Department of Public Safety may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred prior to the date on which the application is submitted, or may revoke a license if the licensee has been found guilty of one or more crimes of violence within the preceding three (3) years. The department shall, upon notification by a law enforcement agency or a court and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case. The provisions of subsection (7) of this section shall apply to any suspension or revocation of a license pursuant to the provisions of this section.

(4) The application shall be completed, under oath, on a form promulgated by the Department of Public Safety and shall include only:

(a) The name, address, place and date of birth, race, sex and occupation of the applicant;

(b) The driver's license number or social security number of applicant;

(c) Any previous address of the applicant for the two (2) years preceding the date of the application;

(d) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(e) A statement that the applicant has been furnished a copy of this section and is knowledgeable of its provisions;

(f) A conspicuous warning that the application is executed under oath and that a knowingly false answer to any question, or the knowing submission of any false document by the applicant, subjects the applicant to criminal prosecution; and

(g) A statement that the applicant desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself.

(5) The applicant shall submit only the following to the Department of Public Safety:

(a) A completed application as described in subsection (4) of this section;

(b) A full-face photograph of the applicant taken within the preceding thirty (30) days in which the head, including hair, in a size as determined by the Department of Public Safety, except that an applicant who is younger than twenty-one (21) years of age must submit a photograph in profile of the applicant;

(c) A nonrefundable license fee of One Hundred Dollars ($100.00). Costs for processing the set of fingerprints as required in paragraph (d) of this subsection shall be borne by the applicant. Honorably retired law enforcement officers and disabled veterans shall be exempt from the payment of the license fee;

(d) A full set of fingerprints of the applicant administered by the Department of Public Safety; and

(e) A waiver authorizing the Department of Public Safety access to any records concerning commitments of the applicant to any of the treatment facilities or institutions referred to in subsection (2) and permitting access to all the applicant's criminal records.

(6)(a) The Department of Public Safety, upon receipt of the items listed in subsection (5) of this section, shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing.

(b) The Department of Public Safety shall forward a copy of the applicant's application to the sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence. The sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence may, at his discretion, participate in the process by submitting a voluntary report to the Department of Public Safety containing any readily discoverable prior information that he feels may be pertinent to the licensing of any applicant. The reporting shall be made within thirty (30) days after the date he receives the copy of the application. Upon receipt of a response from a sheriff or police chief, such sheriff or police chief shall be reimbursed at a rate set by the department.

(c) The Department of Public Safety shall, within forty-five (45) days after the date of receipt of the items listed in subsection (5) of this section:

(i) Issue the license;

(ii) Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsections (2) and (3) of this section. If the Department of Public Safety denies the application, it shall notify the applicant in writing, stating the ground for denial, and the denial shall be subject to the appeal process set forth in subsection (7); or

(iii) Notify the applicant that the department is unable to make a determination regarding the issuance or denial of a license within the

forty-five-day period prescribed by this subsection, and provide an estimate of the amount of time the department will need to make the determination.

(d) In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of two (2) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name check conducted by the Mississippi Highway Safety Patrol at the request of the Department of Public Safety.

(7)(a) If the Department of Public Safety denies the issuance of a license, or suspends or revokes a license, the party aggrieved may appeal such denial, suspension or revocation to the Commissioner of Public Safety, or his authorized agent, within thirty (30) days after the aggrieved party receives written notice of such denial, suspension or revocation. The Commissioner of Public Safety, or his duly authorized agent, shall rule upon such appeal within thirty (30) days after the appeal is filed and failure to rule within this thirty-day period shall constitute sustaining such denial, suspension or revocation. Such review shall be conducted pursuant to such reasonable rules and regulations as the Commissioner of Public Safety may adopt.

(b) If the revocation, suspension or denial of issuance is sustained by the Commissioner of Public Safety, or his duly authorized agent pursuant to paragraph (a) of this subsection, the aggrieved party may file within ten (10) days after the rendition of such decision a petition in the circuit or county court of his residence for review of such decision. A hearing for review shall be held and shall proceed before the court without a jury upon the record made at the hearing before the Commissioner of Public Safety or his duly authorized agent. No such party shall be allowed to carry a stun gun, concealed pistol or revolver pursuant to the provisions of this section while any such appeal is pending.

(8) The Department of Public Safety shall maintain an automated listing of license holders and such information shall be available online, upon request, at all times, to all law enforcement agencies through the Mississippi Crime Information Center. However, the records of the department relating to applications for licenses to carry stun guns, concealed pistols or revolvers and records relating to license holders shall be exempt from the provisions of the Mississippi Public Records Act of 1983, and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after having a license lost or destroyed, the licensee shall notify the Department of Public Safety in writing of such change or loss. Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by a summons.

(10) In the event that a stun gun, concealed pistol or revolver license is lost or destroyed, the person to whom the license was issued shall comply with

the provisions of subsection (9) of this section and may obtain a duplicate, or substitute thereof, upon payment of Fifteen Dollars ($15.00) to the Department of Public Safety, and furnishing a notarized statement to the department that such license has been lost or destroyed.

(11) A license issued under this section shall be revoked if the licensee becomes ineligible under the criteria set forth in subsection (2) of this section.

(12)(a) No less than ninety (90) days prior to the expiration date of the license, the Department of Public Safety shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the department. The licensee must renew his license on or before the expiration date by filing with the department the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and a full set of fingerprints administered by the Department of Public Safety or the sheriff of the county of residence of the licensee. The first renewal may be processed by mail and the subsequent renewal must be made in person. Thereafter every other renewal may be processed by mail to assure that the applicant must appear in person every ten (10) years for the purpose of obtaining a new photograph.

(i) Except as provided in this subsection, a renewal fee of Fifty Dollars ($50.00) shall also be submitted along with costs for processing the fingerprints;

(ii) Honorably retired law enforcement officers and disabled veterans shall be exempt from the renewal fee; and

(iii) The renewal fee for a Mississippi resident aged sixty-five (65) years of age or older shall be Twenty-five Dollars ($25.00).

(b) The Department of Public Safety shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing. The license shall be renewed upon receipt of the completed renewal application and appropriate payment of fees.

(c) A licensee who fails to file a renewal application on or before its expiration date must renew his license by paying a late fee of Fifteen Dollars ($15.00). No license shall be renewed six (6) months or more after its expiration date, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees pursuant to subsection (5) of this section must be submitted, and a background investigation shall be conducted pursuant to the provisions of this section.

(13) No license issued pursuant to this section shall authorize any person to carry a stun gun, concealed pistol or revolver into any place of nuisance as defined in Section 95-3-1, Mississippi Code of 1972; any police, sheriff or highway patrol station; any detention facility, prison or jail; any courthouse; any courtroom, except that nothing in this section shall preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his courtroom; any polling place; any meeting place of the governing body of any governmental entity; any meeting of the Legislature or a committee thereof; any school, college or professional athletic event not related

to firearms; any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages; any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose; any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity; inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; any church or other place of worship; or any place where the carrying of firearms is prohibited by federal law. In addition to the places enumerated in this subsection, the carrying of a stun gun, concealed pistol or revolver may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol or revolver is prohibited." No license issued pursuant to this section shall authorize the participants in a parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver.

(14) A law enforcement officer as defined in Section 45-6-3, chiefs of police, sheriffs and persons licensed as professional bondsmen pursuant to Chapter 39, Title 83, Mississippi Code of 1972, shall be exempt from the licensing requirements of this section. The licensing requirements of this section do not apply to the carrying by any person of a stun gun, pistol or revolver, knife, or other deadly weapon that is not concealed as defined in Section 97-37-1.

(15) Any person who knowingly submits a false answer to any question on an application for a license issued pursuant to this section, or who knowingly submits a false document when applying for a license issued pursuant to this section, shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in Section 99-19-31, Mississippi Code of 1972.

(16) All fees collected by the Department of Public Safety pursuant to this section shall be deposited into a special fund hereby created in the State Treasury and shall be used for implementation and administration of this section. After the close of each fiscal year, the balance in this fund shall be certified to the Legislature and then may be used by the Department of Public Safety as directed by the Legislature.

(17) All funds received by a sheriff or police chief pursuant to the provisions of this section shall be deposited into the general fund of the county or municipality, as appropriate, and shall be budgeted to the sheriff's office or police department as appropriate.

(18) Nothing in this section shall be construed to require or allow the registration, documentation or providing of serial numbers with regard to any stun gun or firearm.

(19) Any person holding a valid unrevoked and unexpired license to carry stun guns, concealed pistols or revolvers issued in another state shall have such license recognized by this state to carry stun guns, concealed pistols or

revolvers. The Department of Public Safety is authorized to enter into a reciprocal agreement with another state if that state requires a written agreement in order to recognize licenses to carry stun guns, concealed pistols or revolvers issued by this state.

(20) The provisions of this section shall be under the supervision of the Commissioner of Public Safety. The commissioner is authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

(21) For the purposes of this section, the term "stun gun" means a portable device or weapon from which an electric current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure, momentarily stun, knock out, cause mental disorientation or paralyze.

SOURCES: Laws, 1991, ch. 609, § 1; Laws, 1997, ch. 470, § 1; Laws, 2004, ch. 430, § 1; Laws, 2007, ch. 507, § 1; Laws, 2008, ch. 459, § 1; Laws, 2009, ch. 518, § 1; Laws, 2010, ch. 480, § 2; Laws, 2012, ch. 372, § 1; Laws, 2013, ch. 307, § 2; Laws, 2013, ch. 308, § 4; Laws, 2014, ch. 307, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 2 of ch. 307, Laws of 2013, effective from and after passage (approved March 4, 2013), amended this section. Section 4 of ch. 308, Laws of 2013, effective from and after July 1, 2013 (approved March 4, 2013), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

Amendment Notes — The 2012 amendment in (19), deleted "provided that the issuing state authorizes license holders from this state to carry stun guns, concealed pistols or revolvers in such issuing state and the appropriate authority has communicated that fact to the Department of Public Safety" at the end of the first sentence and added the last sentence.

The first 2013 amendment (ch. 307), substituted "and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records" for "for a period of forty five (45) days from the date of the issuance of the license or the final denial of an application" at the end of the last sentence of (8).

The second 2013 amendment (ch. 308), added (2)(b); in (2)(*l*) deleted "or own" preceding "a weapon based on federal law"; added the exception at the end of (5)(b); added the last sentence of (14); and deleted former last sentence of (18), which read: "Further, nothing in this section shall be construed to allow the open and unconcealed carrying of any stun gun or a deadly weapon as described in Section 97-37-1, Mississippi Code of 1972."

The 2014 amendment inserted "and disabled veterans" following "law enforcement officers" in the last sentence of (5)(c) and in (12)(a)(ii).

Cross References — Private information of persons possessing a weapon permit issued under this section or Section 97-37-7 exempt from Mississippi Public Records Act, see § 25-61-11.1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 45-9-103. Federal firearm reporting.

(1) In this section, "federal prohibited-person information" means information that identifies an individual as:

(a) A person who has been judicially determined by a court as a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treatment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) A person acquitted in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) An adult individual for whom a court has appointed a guardian or conservator under Title 93, Chapter 13, based on the determination that the person is incapable of managing his own estate due to mental weakness; or

(d) A person determined to be incompetent to stand trial by a court pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice.

(2) The Department of Public Safety by rule shall establish a procedure to provide federal prohibited-person information to the Federal Bureau of Investigation for use with the National Instant Criminal Background Check System. Except as otherwise provided by state law, the department may disseminate federal prohibited-person information under this subsection only to the extent necessary to allow the Federal Bureau of Investigation to collect and maintain a list of persons who are prohibited under federal law from engaging in certain activities with respect to a firearm.

(3) The department shall grant access to a person's own federal prohibited-person information to the person who is the subject of the information.

(4) Federal prohibited-person information maintained by the department is confidential information for the use of the department and, except as otherwise provided by this section and other state law, is not a public record and may not be disseminated by the department.

(5) The department by rule shall establish a procedure to correct department records and transmit those corrected records to the Federal Bureau of Investigation when a person provides:

(a) A copy of a judicial order or finding under Section 93-13-151 that a person has been restored to reason;

(b) Proof that the person has obtained notice of relief from disabilities under 18 USC, Section 925; or

(c) A copy of a judicial order of relief from a firearms disability under Section 97-37-5(4).

SOURCES: Laws, 2013, ch. 384, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in subsection (1)(a) by substituting "a person with mental illness or person with an intellectual disability" for "a mentally ill or mentally retarded person." The Joint Committee ratified the correction at its August 1, 2013, meeting.

PURCHASE OF SIDEARMS BY RETIRING LAW ENFORCEMENT PERSONNEL

SEC.

45-9-131. Purchase of sidearm by retiring law enforcement officer or spouse of law enforcement officer killed in line of duty.

§ 45-9-131. Purchase of sidearm by retiring law enforcement officer or spouse of law enforcement officer killed in line of duty.

Upon approval of the governing authority of the municipality or county, a member of any municipal or county law enforcement agency who retires under any state retirement system or the spouse of a law enforcement officer who is killed in the line of duty may be allowed to purchase as his or her personal property one (1) sidearm which was issued to the law enforcement officer by the law enforcement agency from which he or she retired or by whom he or she was employed at the time of death. The governing authority of the municipality or county shall determine the amount to be paid for the firearm by the retiring member of the law enforcement agency or the spouse of the law enforcement officer.

SOURCES: Laws, 1995, ch. 462, § 1; Laws, 2013, ch. 381, § 1, eff from and after passage (approved Mar. 20, 2013.)

Amendment Notes — The 2013 amendment substituted "authority" for "authorities" in both sentences; inserted "or the spouse of a law enforcement officer who is killed in the line of duty" and "or by whom he or she was employed at the time of death" in the first sentence and "or the spouse of the law enforcement officer" in the second sentence and made gender neutral changes throughout.

CHAPTER 11

Fire Protection Regulations, Fire Protection and Safety in Buildings

State Chief Deputy Fire Marshal and State Firefighter's School 45-11-1
Mississippi Fire Personnel Minimum Standards and Certification Board 45-11-251

STATE CHIEF DEPUTY FIRE MARSHAL AND STATE FIREFIGHTER'S SCHOOL

SEC.

45-11-1. Commissioner of Insurance as State Fire Marshal; appointment of State Chief Deputy Fire Marshal; qualifications, powers and duties; records of fires investigated; appointment of State Chief Assistant Deputy Fire Marshal.

§ 45-11-1. Commissioner of Insurance as State Fire Marshal; appointment of State Chief Deputy Fire Marshal; qualifications, powers and duties; records of fires investigated; appointment of State Chief Assistant Deputy Fire Marshal.

(1) The Commissioner of Insurance is by virtue of his office the State Fire Marshal and shall appoint the State Chief Deputy Fire Marshal who, along with his employees, shall be designated as a division of the Insurance Department. The State Chief Deputy Fire Marshal shall be a person qualified by experience and training and thoroughly knowledgeable in the areas of arson investigation and prevention, fire prevention, fire fighting and the training of firemen. The State Chief Deputy Fire Marshal shall serve at the will and pleasure of the Commissioner of Insurance.

(2) The State Chief Deputy Fire Marshal shall employ such deputy state fire marshals as are necessary and in accordance with availability of funds. Deputy fire marshals shall be deployed across the state in order to provide effective service to fire scenes.

(3) It shall be the duty of the State Chief Deputy Fire Marshal to investigate, by himself or his deputy, the origin of every fire occurring within the state to which his attention is called by the chief of the fire department or other law enforcement authority of any county or municipality. It shall also be his duty to investigate any case requested by any party in interest, whenever, in his judgment, there be sufficient evidence or circumstances indicating that such fire may be of incendiary origin. All county and municipal law enforcement authorities shall cooperate with the State Chief Deputy Fire Marshal in such investigation. This section shall not be construed to impair the duty and power of county and municipal law enforcement authorities to investigate any fire occurring within his or their jurisdiction.

(4)(a) The State Chief Deputy Fire Marshal and deputy state fire marshals shall have the following powers:

(i) To arrest without warrant any person or persons committing or attempting to commit any misdemeanor or felony within their presence or view but only such violations of law or violations of regulations adopted pursuant to this chapter or Chapter 49, Title 75, Mississippi Code of 1972;

(ii) To pursue and so arrest any person committing an offense as described under subparagraph (i) of this paragraph to and at any place in the State of Mississippi where he may go or be;

(iii) To execute all warrants and search warrants related to, and investigate any violation of the laws and regulations related to this chapter and Chapter 49, Title 75, Mississippi Code of 1972, and prevent, arrest and apprehend such violators; and

(iv) To aid and assist any peace officer of this state or any other state if requested, or in manhunts or natural disasters within the state, and upon the consent of the State Fire Marshal, within the jurisdiction of the called event.

(b) Nothing herein shall be construed as granting the State Chief Deputy Fire Marshal or deputy state fire marshals general police powers.

(c) All deputy state fire marshals hired on or after July 1, 2013, shall be required to complete or have completed the Law Enforcement Officers Training Program and shall meet the standards of the program.

(5) The State Chief Deputy Fire Marshal shall maintain in his office a record of all fires investigated by him or his deputy, including evidence obtained as to the origin of each such fire.

(6) Such record shall at all times be subject to inspection by any party of interest in the fire loss; provided, however, that no record or report of an investigation shall be subject to inspection pending such investigation or while same is in progress, and if a report of an investigation contains any evidence of arson or other felony, same shall not be subject to inspection by any person other than the district attorney and county attorney of the county in which such evidence indicates that arson or other felony may have been committed, except upon the written approval of such district attorney or the order of a court of competent jurisdiction. Provided that in cases where a person has been arrested for the crimes of arson, attempted arson, or any other felony, the defendant or his attorney shall have access to these records. Any physical evidence of arson or other felony shall be delivered to the custody of the sheriff of the county wherein such fire occurred.

(7) The State Chief Deputy Fire Marshal may appoint, with the consent of the Commissioner of Insurance, a State Chief Assistant Deputy Fire Marshal, who shall have power, during the chief deputy's absence or inability to act due to any cause, to perform any and all of the duties of the chief deputy. The chief assistant deputy shall serve at the will and pleasure of the Commissioner of Insurance.

SOURCES: Codes, 1906, § 2660; Hemingway's 1917, § 5126; 1930, § 5189; 1942, § 5699; Laws, 1964, ch. 421, § 1; Laws, 1988, ch. 584, § 2; Laws, 1992, ch. 328, § 1; Laws, 2012, ch. 381, § 1; Laws, 2013, ch. 360, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2012 amendment inserted paragraph designators (1) through (5) and added (6); and inserted "will and" preceding "pleasure of the Commissioner" in the third sentence in (1) and made a minor stylistic change.

The 2013 amendment added (4) and renumbered the remaining subsections accordingly.

Cross References — Law Enforcement Officers Training Program, see §§ 45-6-1 et seq.

MISSISSIPPI FIRE PERSONNEL MINIMUM STANDARDS AND CERTIFICATION BOARD

SEC.

45-11-251. Board established; members; terms; qualifications; officers.

§ 45-11-251. Board established; members; terms; qualifications; officers.

(1) There is hereby created the Mississippi Fire Personnel Minimum Standards and Certification Board. The board shall consist of eleven (11) members. The Commissioner of Insurance and the Director of the State Fire Academy shall serve as ex officio members. The Director of the State Fire Academy shall serve as secretary to the board. The Commissioner of Insurance may appoint a designee to serve in his absence.

(2) Nine (9) members of the Mississippi Fire Personnel Minimum Standards and Certification Board shall be selected as follows:

(a) Two (2) full-time paid firefighters below the rank of chief selected by the Mississippi Fire Fighters Association. The initial term shall be staggered with one (1) member serving a two-year term and one (1) member serving a three-year term. After the expiration of the initial term, the term shall be for three (3) years;

(b) One (1) full-time firefighter below the rank of fire chief selected by the Professional Fire Fighters Association of Mississippi;

(c) Three (3) career fire chiefs selected by the Mississippi Fire Chiefs Association. The initial term shall be staggered: one (1) member shall serve a term of one (1) year; one (1) member shall serve a term of two (2) years; and one (1) member shall serve a term of three (3) years. After the expiration of the initial term, the term shall be for three (3) years;

(d) One (1) full-time paid certified fire instructor selected by the Mississippi Fire Fighters Service Instructors Association. The initial term shall be for one (1) year. After the expiration of the initial term, the term shall be for three (3) years;

(e) One (1) full-time paid fire investigator from a paid department selected by the Mississippi Fire Investigators Association. The initial term shall be for two (2) years. After the expiration of the initial term, the term shall be for three (3) years; and

(f) One (1) member of the volunteer fire service selected by the Mississippi Fire Fighters Association. The initial term shall be for three (3) years. After the expiration of the initial term, the term shall be for three (3) years.

No member selected under this subsection shall serve more than two (2) terms consecutively. Any member missing three (3) consecutive meetings shall be deemed to have resigned from the board. A vacancy prior to the expiration of a term shall be filled by selection in the same manner and for the balance of the unexpired term.

(3) During his term, a member of the board shall not serve as a member of the State Fire Academy Advisory Board.

(4) The board shall select a chairman and vice chairman from its membership.

(5) The Department of Insurance shall provide administrative support for the board.

(6) Members of the Mississippi Fire Personnel Minimum Standards and Certification Board who are not state employees shall be entitled to a per diem

compensation as provided in Section 25-3-69, and to travel expenses as provided in Section 25-3-41. The provisions of this subsection shall apply to travel necessary to attend board meetings, as well as other travel authorized by the board and required in the performance of official duties.

SOURCES: Laws, 1992, ch. 529, § 1; Laws, 2004, ch. 533, § 1; Laws, 2005, ch. 312, § 1; Laws, 2014, ch. 381, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (6).

CHAPTER 27

Mississippi Justice Information Center

SEC.

45-27-3. Definitions.
45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; new or upgraded computerized records management systems to be formatted to Department of Justice approved format.

§ 45-27-3. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them in this section unless the context requires otherwise:

(a) "Criminal justice agencies" means public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(b) "Offense" means an act which is a felony or a misdemeanor.

(c) "Justice information system" means those agencies, procedures, mechanisms, media and forms, as well as the information itself, which are or become involved in the origination, transmittal, storage, retrieval and dissemination of information related to reported offenses and offenders, and the subsequent actions related to the events or persons.

(d) "Criminal justice information" means the following classes of information:

(i) "Secret data," which includes information dealing with those elements of the operation and programming of the Mississippi Justice Information Center computer system and the communications network and satellite computer systems handling criminal justice information which prevents unlawful intrusion into the system.

(ii) "Criminal history record information," which means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, affidavits, information or other formal charges and any disposition arising therefrom, sentencing, correctional supervision and release. The term

does not include identification information such as fingerprint records or images to the extent that the information does not indicate involvement of the individual in the criminal justice system.

(iii) "Sensitive data," which contains statistical information in the form of reports, lists and documentation which may identify a group characteristic, such as "white" males or "stolen" guns.

(iv) "Restricted data," which contains information relating to data-gathering techniques, distribution methods, manuals and forms.

(v) "Law enforcement agency" or "originating agency" or "agency" which includes a governmental unit or agency composed of one or more persons employed full time or part time by the state as a political subdivision thereof for the following purposes: (A) the administration of criminal justice, which includes the prevention and detection of crime; the apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; or the collection, storage and dissemination of criminal history record information; or (B) the enforcement of state laws or local ordinances, which includes making arrests for crimes while acting within the scope of their authority. The agency must perform one or more of the above-described criminal justice duties and allocate a substantial part of its annual budget to the administration of criminal justice.

(e) "Center" means the Mississippi Justice Information Center or the Mississippi Criminal Information Center.

(f) "Department" means the Mississippi Department of Public Safety.

(g) "Conviction information" means criminal history record information disclosing that a person was found guilty of, or has pleaded guilty or nolo contendere to, a criminal offense in a court of law, together with any sentencing information. This includes a conviction in a federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, or a conviction for an offense committed on an Indian Reservation or other federal property, or any court of a state of the United States.

(h) "Nonconviction information" means arrest without disposition information if an interval of one (1) year has elapsed from the date of arrest and no active prosecution for the charge is pending, as well as all acquittals and all dismissals.

(i) "Arrest card" means the initial law enforcement agency documentation of an arrest, whether in physical or digital form, including fingerprint information.

(j) "Disposition form" means the form prescribed by rule of the Justice Information Center for a court or law enforcement agency to report the disposition of the case of a person who has been arrested.

(k) "Disposition" means the outcome of the case of a person who was arrested and includes, without limitation:

(i) Nonadjudication;

(ii) A verdict or plea of guilt;

(iii) A plea of nolo contendere;
(iv) A verdict of not guilty;
(v) Dismissal;
(vi) Nolle prosequi;
(vii) Remand to the file;
(viii) Expunction; or
(ix) An appeal.

SOURCES: Laws, 1980, ch. 555, § 2; reenacted, Laws, 1983, ch. 381, § 2; Laws, 2001, ch. 500, § 14; Laws, 2014, ch. 403, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "the" for "such" in (c) and (d)(ii); added (i), (j), and (k); and made minor stylistic changes.

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-27-9. Submission of data to center by criminal justice agencies; center to promptly purge records upon receipt of lawful expunction order; new or upgraded computerized records management systems to be formatted to Department of Justice approved format.

(1) All criminal justice agencies within the state shall submit to the center an arrest card that will transmit fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this state for all felonies and misdemeanors as described in Section 45-27-7(2)(a). It shall be the duty of all chiefs of police, sheriffs, district attorneys, courts, court clerks, judges, parole and probation officers, wardens or other persons in charge of correctional institutions in this state to furnish the center with all data required by the rules duly promulgated under the Administrative Procedures Act to carry out its responsibilities under this chapter, and the duty of courts and court clerks to submit a disposition form for every disposition. It shall be the duty of all criminal justice agencies within the state to supply the prosecutor and the proper court with the disposition form that is attached to the physical arrest card if fingerprints were taken manually or, if fingerprints were captured digitally, the disposition form generated by the electronic fingerprint device at the time of the arrest.

(2) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, fingerprints according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation, full face and profile photographs (if equipment is available) and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection (1) of this section, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file. Any record taken in connection with any person arrested or taken into

custody and subsequently released without charge or cleared of the offense through court proceedings shall be purged from the files of the center and destroyed upon receipt by the center of a lawful expunction order. All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrests or takings into custody which result in release without charge or subsequent exoneration from criminal liability within twenty-four (24) hours of the release or exoneration.

(3) Fingerprints and other identifying data required to be taken under subsection (2) shall be forwarded within twenty-four (24) hours after taking for filing and classification, but the period of twenty-four (24) hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo Available" and the photographs shall be forwarded subsequently if the center so requests.

(4) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year and at other times if requested by the center, confirm all arrest warrants which continue to be outstanding. Upon receipt of a lawful expunction order, the center shall purge and destroy files of all data relating to an offense when an individual is subsequently exonerated from criminal liability of that offense. The center shall not be liable for the failure to purge, destroy or expunge any records if an agency or court fails to forward to the center proper documentation ordering the action.

(5) All persons in charge of state correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the Federal Bureau of Investigation or as otherwise directed by the center, and full face and profile photographs of all persons received on commitment to the institutions. The prints so taken shall be forwarded to the center, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints, as before, and forward them to the center within ten (10) days, along with any other related information requested by the center. The institution shall notify the center immediately upon the release of the person.

(6) All persons in charge of law enforcement agencies, all court clerks, all municipal justices where they have no clerks, all justice court judges and all persons in charge of state and county probation and parole offices, shall supply the center with the information described in subsections (4) and (10) of this section on the basis of the forms and instructions for the disposition form to be supplied by the center.

(7) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with

guidelines established by the center. All law enforcement agencies and correctional institutions in this state having criminal identification files shall cooperate in providing the center with copies of the items in the files which will aid in establishing the nucleus of the state criminal identification file.

(8) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed a crime. The report shall be made within a reasonable time period following the reporting department's or agency's determination that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(9) All law enforcement agencies in the state shall immediately notify the center if at any time after making a report as required by subsection (8) of this section it is determined by the reporting department or agency that a person is no longer wanted or that a vehicle or property stolen has been recovered. Furthermore, if the agency making the apprehension or recovery is not the one which made the original report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery using methods prescribed by the center.

(10) All law enforcement agencies in the state and clerks of the various courts shall promptly report to the center all instances where records of convictions of criminals are ordered expunged by courts of this state as now provided by law. The center shall promptly expunge from the files of the center and destroy all records pertaining to any convictions that are ordered expunged by the courts of this state as provided by law.

(11) The center shall not be held liable for the failure to purge, destroy or expunge records if an agency or court fails to forward to the center proper documentation ordering the action.

(12) Any criminal justice department or agency making an expenditure in excess of Five Thousand Dollars ($5,000.00) in any calendar year on software or programming upgrades concerning a computerized records management system or jail management system shall ensure that the new or upgraded system is formatted to Department of Justice approved XML format and that no impediments to data sharing with other agencies or departments exist in the software programming.

SOURCES: Laws, 1980, ch. 555, § 5; reenacted, Laws, 1983, ch. 381, § 5; Laws, 2001, ch. 500, § 17; Laws, 2007, ch. 436, § 3; Laws, 2014, ch. 403, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1), inserted "an arrest card that will transmit" near the beginning; substituted "all data required by the rules duly promulgated under the Administrative Procedures Act" for "any other data deemed necessary by the center"; and added "and the duty ... of the arrest" at the end; deleted "such" following "requested by the center, confirm all" in (4); inserted "for the disposition

form" in (6); and substituted "the" for "such" once in (2) and (11) and twice in (4), (5), (7), and (9).

CHAPTER 33

Registration of Sex Offenders

SEC.

45-33-23. Definitions.
45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.
45-33-26. Prohibition against sex offender being present in or within a certain distance of school building or school property or in or about any public beach or public campground where minor children congregate; exemptions; penalties.
45-33-31. Reregistration.
45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.
45-33-36. Duty of Department of Public Safety to provide sex offender registration information; notification to residents.
45-33-39. Notification to defendant charged with sex offense; notice included on any guilty plea form and judgement and sentence forms.
45-33-41. Notification to inmates and offenders by Department of Corrections, county or municipal jails, and juvenile detention facilities; victim notification.
45-33-45. Data monitoring and alert system for certain persons required to be monitored.
45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.
45-33-57. Fees.
45-33-61. Access to Administrative Office of Courts' youth court data management system by sex offenders prohibited.

§ 45-33-21. Legislative findings and declaration of purpose.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

§ 45-33-23. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Conviction" means that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld. "Conviction of similar offenses" includes, but is not limited to, a conviction by a federal or military tribunal, including a court-martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian Reservation or other federal property, a conviction in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) Public Law 109-248.

(b) "Department" means the Mississippi Department of Public Safety unless otherwise specified.

(c) "Jurisdiction" means any court or locality including any state court, federal court, military court, Indian tribunal or foreign court, the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and Indian tribes that elect to function as registration jurisdictions under Title 1, SORNA Section 127 of the Adam Walsh Child Safety Act.

(d) "Permanent residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(e) "Registration" means providing information to the appropriate agency within the time frame specified as required by this chapter.

(f) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the State Crime Laboratory pursuant to Section 45-33-37; the photograph, fingerprints and other registration information are to be forwarded to the Department of Public Safety immediately.

(g) "Responsible agency" is defined as the person or government entity whose duty it is to obtain information from a criminal sex offender upon conviction and to transmit that information to the Mississippi Department of Public Safety.

(i) For a criminal sex offender being released from the custody of the Department of Corrections, the responsible agency is the Department of Corrections.

(ii) For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county.

(iii) For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality.

(iv) For a sex offender in the custody of the youth court, the responsible agency is the youth court.

(v) For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court.

(vi) For an offender who has been committed to a mental institution following an acquittal by reason of insanity, the responsible agency is the facility from which the offender is released. Specifically, the director of the facility shall notify the Department of Public Safety before the offender's release.

(vii) For a criminal sex offender who is being released from a jurisdiction outside this state or who has a prior conviction in another jurisdiction and who is to reside, work or attend school in this state, the responsible agency is both the sheriff of the proposed county of residence and the department.

(h) "Sex offense" or "registrable offense" means any of the following offenses:

(i) Section 97-3-53 relating to kidnapping, if the victim was below the age of eighteen (18);

(ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(iii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;

(viii) Section 97-5-33 relating to the exploitation of children;

(ix) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(x) Section 97-29-3 relating to sexual intercourse between teacher and student;

(xi) Section 97-29-59 relating to unnatural intercourse;

(xii) Section 43-47-18 relating to sexual abuse of a vulnerable person;

(xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c);

(xiv) Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;

(xv) Section 97-29-63 relating to filming another without permission where there is an expectation of privacy;

(xvi) Section 97-29-45(1)(a) relating to obscene electronic communication;

(xvii) Section 97-3-104 relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners;

(xviii) Section 97-5-39(1)(e) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;

(xix) Section 97-1-7 relating to attempt to commit any of the above-referenced offenses;

(xx) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;

(xxi) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;

(xxii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;

(xxiii) Capital murder when one (1) of the above-described offenses is the underlying crime.

(i) "Temporary residence" is defined as any place where the person abides, lodges, or resides for a period of seven (7) or more consecutive days which is not the person's permanent residence.

SOURCES: Laws, 2000, ch. 499, § 2; Laws, 2001, ch. 500, § 1; Laws, 2006, ch. 328, § 3; Laws, 2006, ch. 563, § 1; Laws, 2006, ch. 583, § 7; Laws, 2007, ch. 392, § 1; Laws, 2009, ch. 411, § 1; Laws, 2011, ch. 359, § 1; Laws, 2012, ch. 557, § 3; Laws, 2013, ch. 521, § 1, eff from and after Jan. 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (h)(xviii) by substituting "Section 97-5-39(1)(e)" for "Section 97-5-39(1)(c)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2012 amendment inserted (g)(xiv) and made related redesignations.

The 2013 amendment, effective January 1, 2014, added (b); added (h)(x); deleted former (h)(xi) which added Section 97-1-7 to the list of registrable offenses; in (h)(xiii), inserted "and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c)"; deleted former (i) which defined "Department"; and made minor stylistic changes.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

§ 45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of or acquitted by reason of insanity of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

(1)(a) Any person having a permanent or temporary residence in this state or who is employed or attending school in this state who has been convicted of a registrable offense in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction shall register with the responsible agency and the Mississippi Department of Public Safety. Registration shall not be required for an offense that is not a registrable sex offense or for an offender who is under fourteen (14) years of age. The department shall provide the initial registration information as well as every change of name, change of address, change of status at a school, or other change of information as required by the department to the sheriff of the county of the residence address of the registrant, the sheriff of the county of the employment address, and the sheriff of the county of the school address, if applicable, and any other jurisdiction of the registrant through either written notice, electronic or telephone transmissions, or online access to registration information. Further, the department shall provide this information to the Federal Bureau of Investigation. Additionally, upon notification by the registrant that he intends to reside outside the State of Mississippi, the department shall notify the appropriate state law enforcement agency of any state to which a registrant is moving or has moved.

(b) Any person having a permanent or temporary residence or who is employed or attending school in this state who has been adjudicated delinquent for a registrable sex offense listed in this paragraph that involved use of force against the victim shall register as a sex offender with the responsible agency and shall personally appear at a Mississippi Department of Public Safety Driver's License Station within three (3) business days of registering with the responsible agency:

(i) Section 97-3-71 relating to rape and assault with intent to ravish;

(ii) Section 97-3-95 relating to sexual battery;

(iii) Section 97-3-65 relating to statutory rape; or

(iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.

(2) Any person required to register under this chapter shall submit the following information at the time of registration:

(a) Name, including a former name which has been legally changed;

(b) Street address of all current permanent and temporary residences within state or out of state at which the sex offender resides or habitually lives, including dates of temporary lodgings. There is a presumption that a registrant owes a duty of updating registration information if:

(i) The registrant remains away from a registered address for seven (7) or more consecutive days; or

(ii) If the registrant remains at another address between the hours of 10:00 p.m. and 6:00 a.m. for more than seven (7) consecutive days;

(c) Date, place and address of employment, including as a volunteer or unpaid intern or as a transient or day laborer;

(d) Crime for which charged, arrested or convicted;

(e) Date and place of conviction, adjudication or acquittal by reason of insanity;

(f) Aliases used or nicknames, ethnic or tribal names by which commonly known;

(g) Social security number and any purported social security number or numbers;

(h) Date and place of birth and any purported date and place of birth;

(i) Age, race, sex, height, weight, hair and eye colors, and any other physical description or identifying factors;

(j) A brief description of the offense or offenses for which the registration is required;

(k) Driver's license or state or other jurisdiction identification card number, which license or card may be electronically accessed by the Department of Public Safety;

(*l*) Anticipated future residence;

(m) If the registrant's residence is a motor vehicle, trailer, mobile home or manufactured home, the registrant shall also provide vehicle identification number, license tag number, registration number and a description, including color scheme, of the motor vehicle, trailer, mobile home or manufactured home; if the registrant's place of residence is a vessel or houseboat, the registrant shall also provide the hull identification number, manufacturer's serial number, name of the vessel or houseboat, registration number and a description, including color scheme, of the vessel or houseboat, including permanent or frequent locations where the motor vehicle, trailer, mobile home, manufactured home, vessel or houseboat is kept;

(n) Vehicle make, model, color and license tag number for all vehicles owned or operated by the sex offender, whether for work or personal use, and the permanent or frequent locations where a vehicle is kept;

(o) Offense history;

(p) Photograph;

(q) Fingerprints and palm prints;

(r) Documentation of any treatment received for any mental abnormality or personality disorder of the person;

(s) Biological sample;

(t) Name of any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education at which the offender is employed, carries on a vocation (with or without compensation) or is enrolled as a student, or will be enrolled as a student, and the registrant's status;

(u) Copy of conviction or sentencing order for the sex offense for which registration is required;

(v) The offender's parole, probation or supervised release status and the existence of any outstanding arrest warrants;

(w) Every online identity, screen name or username used, registered or created by a registrant;

(x) Professional licensing information which authorizes the registrant to engage in an occupation or carry out a trade or occupation;

(y) Information from passport and immigration documents;

(z) All telephone numbers, including, but not limited to, permanent residence, temporary residence, cell phone and employment phone numbers, whether landlines or cell phones; and

(aa) Any other information deemed necessary.

(3) For purposes of this chapter, a person is considered to be residing in this state if he maintains a permanent or temporary residence as defined in Section 45-33-23, including students, temporary employees and military personnel on assignment.

(4)(a) A person required to register under this chapter shall not reside within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school, a child care facility, a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(b) A person residing within three thousand (3,000) feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this subsection if any of the following apply:

(i) The person is serving a sentence at a jail, prison, juvenile facility or other correctional institution or facility.

(ii) The person is subject to an order of commitment under Title 41, Mississippi Code of 1972.

(iii) The person established the subject residence before July 1, 2006.

(iv) The school or child care facility is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(v) The person established the subject residence between July 1, 2006, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the school or child care facility.

(vi) The person is a minor or a ward under a guardianship.

(c) A person residing within three thousand (3,000) feet of the real property comprising a residential child-caring agency, a children's group

care home or any playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years does not commit a violation of this subsection if any of the following apply:

(i) The person established the subject residence before July 1, 2008.

(ii) The residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years is established within three thousand (3,000) feet of the person's residence subsequent to the date the person established residency.

(iii) The person established the subject residence between July 1, 2008, and January 1, 2014, in a location at least one thousand five hundred (1,500) feet from the residential child-caring agency, children's group care home, playground, ballpark or other recreational facility utilized by persons under the age of eighteen (18) years.

(iv) Any of the conditions described in subsection (4)(b)(i), (ii) or (vi) exist.

(5) The Department of Public Safety is required to obtain the text of the law defining the offense or offenses for which the registration is required.

SOURCES: Laws, 2000, ch. 499, § 3; Laws, 2001, ch. 500, § 2; Laws, 2006, ch. 566, § 2; Laws, 2007, ch. 392, § 2; Laws, 2008, ch. 424, § 1; Laws, 2011, ch. 359, § 2; Laws, 2013, ch. 521, § 2, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2013 amendment, effective January 1, 2014, inserted "or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction" preceding "shall register with the responsible" in the first sentence in (1)(a); added the last sentence in (2)(b); added (2)(b)(i) and (ii); substituted "three thousand (3,000)" for "one thousand five hundred (1,500)" throughout; added (4)(b)(v); added (4)(c)(iii); and made minor stylistic changes.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

§ 45-33-26. Prohibition against sex offender being present in or within a certain distance of school building or school property or in or about any public beach or public campground where minor children congregate; exemptions; penalties.

(1)(a) Unless exempted under subsection (2), it is unlawful for a person required to register as a sex offender under Section 45-33-25:

(i) To be present in any school building, on real property comprising any school, or in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds or in the conveyance; or

(ii) To loiter within five hundred (500) feet of a school building or real property comprising any school while persons under the age of eighteen (18) are present in the building or on the grounds.

(b) It is unlawful for a person required to register as a sex offender under Section 45-33-25 to visit or be in or about any public beach or public campground where minor children congregate without advance approval from the Director of the Department of Public Safety Sex Offender Registry, and the registrant is required to immediately report any incidental contact with minor children to the director.

(2)(a) A person required to register as a sex offender who is a parent or guardian of a student attending the school and who complies with subsection (3) may be present on school property if the parent or guardian is:

(i) Attending a conference at the school with school personnel to discuss the progress of the sex offender's child academically or socially;

(ii) Participating in child review conferences in which evaluation and placement decisions may be made with respect to the sex offender's child regarding special education services;

(iii) Attending conferences to discuss other student issues concerning the sex offender's child such as retention and promotion;

(iv) Transporting the sex offender's child to and from school; or

(v) Present at the school because the presence of the sex offender has been requested by the principal for any other reason relating to the welfare of the child.

(b) Subsection (1) of this section shall not apply to a sex offender who is legally enrolled in a particular school or is participating in a school-sponsored educational program located at a particular school when the sex offender is present at that school.

(3)(a) In order to exercise the exemption under subsection (2), a parent or guardian who is required to register as a sex offender must notify the principal of the school of the sex offender's presence at the school unless the offender: (i) has permission to be present from the superintendent or the school board, or (ii) the principal has granted ongoing permission for regular visits of a routine nature.

(b) If permission is granted by the superintendent or the school board, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Notification includes the nature of the sex offender's visit and the hours when the sex offender will be present in the school, and the sex offender is responsible for notifying the principal's office upon arrival and upon departure. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.

(4) For the purposes of this section, the following terms shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "School" means a public or private preschool, elementary school or secondary school.

(b) "Loiter" means standing or sitting idly, whether in or out of a vehicle, or remaining in or around school property without a legitimate reason.

(c) "School official" means the principal, a teacher, any other certified employee of the school, the superintendent of schools, or a member of the school board.

(5) A sex offender who violates this section is guilty of a misdemeanor and subject to a fine not to exceed One Thousand Dollars ($1,000.00), incarceration not to exceed six (6) months in jail, or both.

(6) It is a defense to prosecution under this section that the sex offender did not know and could not reasonably know that the property or conveyance fell within the proscription of this section.

(7) Nothing in this section shall be construed to infringe upon the constitutional right of a sex offender to be present in a school building that is used as a polling place for the purpose of voting.

SOURCES: Laws, 2007, ch. 595, § 1; Laws, 2012, ch. 410, § 3, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 410, § 4 provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage [April 18, 2012], and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment added (1)(b) and made related designation changes in (1).

RESEARCH REFERENCES

ALR. Validity of Statutes Imposing Residency Restrictions on Registered Sex Offenders. 25 A.L.R. 6th 227.

§ 45-33-31. Reregistration.

(1)(a) Registrants who are in compliance with a program of electronic monitoring under this chapter are required to reregister annually.

(b) All other registrants are required to personally appear at a Department of Public Safety Driver's License Station to reregister every ninety (90) days.

(2) Reregistration includes the submission of current information and photograph to the department and the verification of registration information, including the street address and telephone number of the registrant; name, street address and telephone number of the registrant's employment or status at a school, along with any other registration information that may need to be verified and the payment of any required fees.

(3) A person who fails to reregister and obtain a renewal sex offender registration card as required by this section commits a violation of this chapter. The Department of Public Safety will immediately notify any sheriff or other jurisdiction of any changes in information including residence address, employment and status at a school if that jurisdiction, county or municipality is affected by the change.

SOURCES: Laws, 2000, ch. 499, § 6; Laws, 2001, ch. 500, § 5; Laws, 2005, ch. 353, § 3; Laws, 2006, ch. 563, § 4; Laws, 2007, ch. 392, § 5; Laws, 2011, ch. 359, § 6; Laws, 2013, ch. 521, § 5, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2013 amendment, effective January 1, 2014, inserted subsection designators; added (1)(a); and inserted "other" following "All" at the beginning of (1)(b).

§ 45-33-33. Failure to register; reregister or comply with electronic monitoring; violations of chapter; penalties and enforcement.

(1)(a) The failure of an offender to personally appear at a Department of Public Safety Driver's License Station or to provide any registration or other information, including, but not limited to, initial registration, reregistration, change of address information, change of employment, change of name, required notification to a volunteer organization or any other registration duty or submission of information required by this chapter is a violation of this chapter. Additionally, forgery of information or submission of information under false pretenses, whether by the registrant or another person, is also a violation of this chapter.

(b) A person commits a violation of this chapter who:

(i) Knowingly harbors, or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this chapter; or

(ii) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender

about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or

(iii) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

(c) A registrant who is required to submit to electronic monitoring who does not comply with all the terms and conditions of the electronic monitoring commits a violation of this chapter.

(2)(a) Unless otherwise specified, a violation of this chapter shall be considered a felony and shall be punishable by a fine of not more than Five Thousand Dollars ($5,000.00), imprisonment in the custody of the Department of Corrections for not more than five (5) years, or both fine and imprisonment.

(b) A person who is required to register under this chapter who is subsequently convicted for a registration violation under this section, upon release from incarceration, shall submit to mandatory electronic monitoring under the program established under Section 45-33-45 for a period computed by subtracting the time the person spent in actual incarceration from the five-year maximum imprisonment for the offense and the period of post-release monitoring shall not be suspended or reduced by the court or the Department of Corrections.

(3) Whenever it appears that an offender has failed to comply with the duty to register, reregister or submit to electronic monitoring, the department shall promptly notify the sheriff of the county of the last-known address of the offender as well as the sheriff of the county of the last-known location of the offender, if different. Upon notification, the sheriff shall attempt to locate the offender at his last-known address or last-known location.

(a) If the sheriff locates the offender, he shall enforce the provisions of this chapter, including initiation of prosecution if appropriate. The sheriff shall then notify the department with the current information regarding the offender.

(b) If the sheriff is unable to locate the offender, the sheriff shall promptly notify the department and initiate a criminal prosecution against the offender for the failure to register, reregister or comply with electronic monitoring. The sheriff shall make the appropriate transactions into the Federal Bureau of Investigation's wanted-person database and issue a warrant for the offender's arrest. The department shall notify the United States Marshals Service of the offender's noncompliant status and shall update the registry database and website to show the defendant's noncompliant status as an absconder.

(4) A violation of this chapter shall result in the arrest of the offender.

(5) Any prosecution for a violation of this section shall be brought by a prosecutor in the county of the violation.

(6) A person required to register under this chapter who commits any act or omission in violation of this chapter may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sex offender, the county in which the

conviction occurred for the offense or offenses that meet the criteria requiring the person to register, the county in which he was designated a sex offender, or the county in which the sex offender was found.

(7) The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or driving privilege of any offender failing to comply with the duty to report, register or reregister, submit to monitoring, or who has provided false information.

(8) When a person required to register under this chapter is accused of any registration offense under this section, pretrial release on bond shall be conditioned on the offender's submission to electronic monitoring under the program established under Section 45-33-45.

SOURCES: Laws, 2000, ch. 499, § 7; Laws, 2001, ch. 500, § 6; Laws, 2004, ch. 493, § 2; Laws, 2005, ch. 353, § 4; Laws, 2006, ch. 566, § 3; Laws, 2007, ch. 392, § 6; Laws, 2011, ch. 359, § 7; Laws, 2013, ch. 521, § 6, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2013 amendment, effective January 1, 2014, rewrote (1)(a); added (1)(c); in (2)(a), substituted "custody of the Department of Corrections" for "State Penitentiary" and added (b); in (3), inserted "or submit to electronic monitoring"; in (3)(a), inserted "including initiation of prosecution if appropriate"; added "or comply with electronic monitoring" at the end of the first sentence of (3)(b); added "or the county in which the sex offender was found" in (6); inserted "submit to monitoring" in (7); and added (8).

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

RESEARCH REFERENCES

ALR. Admissibility of Actuarial Risk Assessment Testimony in Proceeding to Commit Sex Offender. 20 A.L.R.6th 607.

§ 45-33-36. Duty of Department of Public Safety to provide sex offender registration information; notification to residents.

(1) Upon receipt of sex offender registration or change of registration information, the Department of Public Safety shall immediately provide the information to:

(a) The National Sex Offender Registry or other appropriate databases;

(b) The sheriff of the county and the chief law enforcement officer of any other jurisdiction where the offender resides, lodges, is an employee or is a student or intends to reside, work, attend school or volunteer;

(c) The sheriff of the county and the chief law enforcement officer of any other jurisdiction from which or to which a change of residence, employment or student status occurs;

(d) The Department of Human Services and any other social service entities responsible for protecting minors in the child welfare system;

(e) The probation agency that is currently supervising the sex offender;

(f) Any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 USC 5119(a));

(g) Each school and public housing agency in each jurisdiction in which the sex offender resides, is an employee or is a student;

(h) All prosecutor offices in each jurisdiction in which the sex offender resides, is an employee, or is a student; and

(i) Any other agencies with criminal investigation, prosecution or sex offender supervision functions in each jurisdiction in which the sex offender resides, is an employee, or is a student.

(2) The Department of Public Safety shall post changes to the public registry website within three (3) business days. Electronic notification will be available via the Internet to all law enforcement agencies, to any volunteer organizations in which contact with minors or vulnerable adults might occur and any organization, company or individual who requests notification pursuant to procedures established by the Department of Public Safety. This provision shall take effect upon the state's receipt and implementation of the Department of Justice software in compliance with the provisions of the Adam Walsh Act.

(3) From and after July 1, 2015, local jurisdictions receiving notification and that have the ability may notify residents when a sex offender begins residing, lodges, becomes employed, volunteers or attends school or intends to reside, lodge, work, attend school or volunteer in the area by using a website, social media, print media, e-mail or may provide a link to the Department of Public Safety website.

SOURCES: Laws, 2007, ch. 392, § 17; Laws, 2011, ch. 359, § 9; Laws, 2013, ch. 521, § 7, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2013 amendment, effective January 1, 2014, in (1)(b) and (c), substituted "and the chief law enforcement officer of" for "or" and inserted "lodges"; substituted "and the chief law enforcement officer of" for "or" in (1)(c); and added (3).

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 45-33-39. Notification to defendant charged with sex offense; notice included on any guilty plea form and judgement and sentence forms.

(1) The court shall provide written notification to any defendant charged with a sex offense as defined by this chapter of the registration requirements of Sections 45-33-25 and 45-33-31. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant. The court shall obtain a written acknowledgment of receipt on each occasion.

(2) A court imposing a sentence, disposition or order of commitment following acquittal by reason of insanity shall notify the offender of the registration requirements of Sections 45-33-25 and 45-33-31. The court shall obtain a written acknowledgment of receipt on each occasion.

(3) A court having jurisdiction of any of the offenses enumerated in Section 45-33-23(h) shall cause to be forwarded to the Department of Public Safety a certified record of conviction in such court of any person of any of the offenses listed.

SOURCES: Laws, 2000, ch. 499, § 10; Laws, 2011, ch. 359, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (3) by substituting "45-33-23(h)" for "45-33-23(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

§ 45-33-41. Notification to inmates and offenders by Department of Corrections, county or municipal jails, and juvenile detention facilities; victim notification.

(1) The Department of Corrections or any person having charge of a county or municipal jail or any juvenile detention facility shall provide written notification to an inmate or offender in the custody of the jail or other facility due to a conviction of or adjudication for a sex offense of the registration and notification requirements of Sections 45-33-25, 45-33-31, 45-33-32 and 45-33-59 at the time of the inmate's or offender's confinement and release from confinement, and shall receive a signed acknowledgment of receipt on both occasions.

(2) At least fifteen (15) days prior to the inmate's release from confinement, the Department of Corrections shall notify the victim of the offense or a designee of the immediate family of the victim regarding the date when the offender's release shall occur, provided a current address of the victim or designated family member has been furnished in writing to the Director of Records for such purpose.

SOURCES: Laws, 2000, ch. 499, § 11; Laws, 2004, ch. 493, § 4; Laws, 2007, ch. 392, § 9; Laws, 2014, ch. 457, § 77, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "fifteen (15)" for "ten (10)" at the beginning of (2).

§ 45-33-45. Data monitoring and alert system for certain persons required to be monitored.

(1) The Department of Corrections may enter into a contract with a qualified vendor experienced in and capable of fulfilling the requirements of this section on a daily basis to provide a data monitoring and alert system for persons who are required to be monitored under this chapter. The initial program shall provide for monitoring upon release of the offenders listed in Section 45-33-33 or 45-33-47 as being obligated to be monitored while on bond or upon release from confinement.

(2) The system shall monitor the movement of a monitored subject through public records or other record information systems, and, at a minimum, shall provide:

(a) Time-correlated or continuous tracking of the geographic location of the monitored subject using a Global Positioning System that is based on satellite and other location technology;

(b) An automated monitoring system that can be used to permit law enforcement agencies to compare the geographic positions of monitored subjects with reported crime incidents and the proximity of the monitored subject to a reported crime incident; and

(c) From and after January 1, 2015, and subject to regulations promulgated by the Commissioner of Corrections, notification to:

(i) A victim or family of a victim who have registered for notification when the offender is within a specified range of the victim's or family's residence; and

(ii) Law enforcement when an offender is within the prohibited range of a school or other place where the offender is prohibited from being.

(3) The vendor shall notify the Department of Public Safety or a local law enforcement agency if a registered sex offender does any of the following:

(a) Moves from a residence or address in this state to a residence or address in another state.

(b) Moves from a residence or address in this state to another residence or address in this state.

(4) The Department of Corrections shall develop procedures to determine, investigate and report on a twenty-four-hour-per-day basis a monitored subject's noncompliance with the terms and conditions of the program, and all reports of noncompliance shall be investigated immediately by the law enforcement agency having jurisdiction that receives a report of noncompliance.

(5)(a) The system shall be installed and operational not later than January 1, 2014, following an appropriate testing period. The initial program shall consist of monitoring of the required offenders; in the second phase, the program will provide for notification to victims who have registered for notification.

(b) The Commissioner of Corrections shall study and develop recommendations for the Legislature as to the advisability of monitoring of additional registrants not later than January 1, 2015.

(6) The Commissioner of Corrections may adopt regulations to establish fees and otherwise administer monitoring of sex offenders as required under this chapter.

(7) Notwithstanding any provision of law, rule or regulation to the contrary, the Department of Corrections, Attorney General, Department of Public Safety, Mississippi Bureau of Investigation, and federal, county and municipal law enforcement agencies may share criminal incident information with each other and the vendor selected to provide the monitoring equipment for the program for the purposes of detection and prevention of crime.

SOURCES: Laws, 2013, ch. 521, § 4, eff from and after January 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which enacted this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

§ 45-33-47. Petition for relief from duty to register; grounds; minimum period of continuing registration based on three-tier classification of offenses; certain offenders subject to lifetime registration; certain offenders subject to electronic monitoring.

(1) A sex offender with a duty to register under Section 45-33-25 shall only be relieved of the duty under subsection (2) of this section.

(2) A person required to register for a registrable sex offense under Section 45-33-25 may petition the circuit court of the sentencing jurisdiction, or for a person whose duty to register arose in another jurisdiction, the county in which the registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.

(b) **Tier One.** — (i) Tier One requires registration for a minimum of fifteen (15) years in this state and includes any of the following listed registrable sex offenses:

1. Section 97-5-27(1) relating to dissemination of sexually oriented material to children;

2. Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;

3. Section 97-29-3 relating to misdemeanor sexual intercourse between teacher and student;

4. Section 97-29-45(1)(a) relating to obscene electronic communication;

5. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier;

6. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier;

7. Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had, although registration would not be otherwise required in this state.

(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon fifteen (15) years' satisfaction of the requirements of this section for the convictions classified as Tier One offenses.

(c) **Tier Two.** — (i) Tier Two requires registration for a minimum of twenty-five (25) years in this state and includes any of the following listed registrable sex offenses:

1. Section 97-5-33(3) through (9) relating to the exploitation of children;

2. Section 97-29-59 relating to unnatural intercourse;

3. Section 97-29-63, relating to filming another without permission where there is an expectation of privacy;

4. Section 97-3-104 relating to crime of sexual activity between law enforcement or correctional personnel and prisoners;

5. Section 43-47-18(2)(a) and (b) relating to gratification of lust or fondling by health care employees or persons in position of trust or authority;

6. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier;

7. Any conviction for violation of a similar law of another jurisdiction of any offense listed in this tier; or

8. Any conviction of a Tier One offense if it is the offender's second or subsequent conviction of a registrable sex offense;

(ii) Notwithstanding any other provision of this chapter, an offender may petition the appropriate circuit court to be relieved of the duty to register upon twenty-five (25) years' satisfaction of the requirements of this section for the convictions classified as Tier Two offenses.

(d) **Tier Three.** — Tier Three requires lifetime registration, the registrant not being eligible to be relieved of the duty to register except as otherwise provided in this section, and includes any of the following listed registrable sex offenses:

(i) Section 97-3-65 relating to rape;

(ii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Subsection (1) or (2) of Section 97-5-33 relating to the exploitation of children;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(vii) Section 97-3-53 relating to kidnapping if the victim is under the age of eighteen (18);

(viii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(ix) Section 97-3-54.3 relating to aiding, abetting or conspiring to violate antihuman trafficking provisions;

(x) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(xi) Section 43-47-18 relating to sexual abuse of a vulnerable person by health care employees or persons in a position of trust or authority;

(xii) Section 97-5-39(1)(c) relating to contributing to the neglect or delinquency of a child, felonious abuse and/or battery of a child, if the victim was sexually abused;

(xiii) Capital murder when one (1) of the above described offenses is the underlying crime;

(xiv) Any conviction for violation of a similar law of another jurisdiction or designation as a sexual predator in another jurisdiction;

(xv) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier; or

(xvi) Any conviction of a Tier Two offense if it is the offender's second or subsequent conviction of a registrable sex offense.

(e) An offender who has two (2) separate convictions for any of the registrable offenses described in Section 45-33-23 is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register if at least one (1) of the convictions was entered on or after July 1, 1995.

(f) An offender, twenty-one (21) years of age or older, who is convicted of any sex offense where the victim was fourteen (14) years of age or younger shall be subject to lifetime registration and shall not be relieved of the duty to register.

(g) A first-time offender fourteen (14) years of age or older adjudicated delinquent in a youth court for a registrable offense of rape pursuant to Section 96-3-65 or a registrable offense of sexual battery pursuant to Section 97-3-95 is subject to lifetime registration, but shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration.

(h) Registration following arrest or arraignment for failure to register is not a defense and does not relieve the sex offender of criminal liability for failure to register.

(i) The department shall continue to list in the registry the name and registration information of all registrants who no longer work, reside or attend school in this state even after the registrant moves to another jurisdiction and registers in the new jurisdiction as required by law. The registry shall note that the registrant moved out of state.

(3) In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the circuit in which the petition is filed must be given notice of the petition at least three (3) weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the petitioner may not again petition the court for relief until one (1) year has elapsed unless the court orders otherwise in its order of denial of relief.

(4) The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, the charge is dismissed or the offender has received a court order pursuant to this section relieving him of the duty to register. Upon submission of the appropriate documentation to the department of one (1) of these occurrences, registration duties will be discontinued.

(5) A person required to register as a sex offender who is convicted under Section 45-33-33 of providing false registration information or of failure to register, reregister, update registration, or comply with electronic monitoring shall be subject to electronic monitoring at the expense of the offender under the program provided in Section 45-33-45. Termination of the duty to register also terminates the duty to be monitored.

SOURCES: Laws, 2000, ch. 499, § 14; Laws, 2001, ch. 500, § 10; Laws, 2006, ch. 566, § 4; Laws, 2007, ch. 392, § 11; Laws, 2011, ch. 359, § 11; Laws, 2013, ch. 521, § 3, eff from and after Jan. 1, 2014.

Editor's Note — Chapter 521, Laws of 2013, which amended this section, is known as "Lenora's Law."

Laws of 2013, ch. 521, § 8, provides:

"SECTION 8. This act shall take effect and be in force from and after January 1, 2014, and shall apply to registration and monitoring offenses committed on or after that date."

Amendment Notes — The 2013 amendment, effective January 1, 2014, in (2), substituted "required" for "having a duty" and inserted "for a registrable sex offense"; inserted "registrable" in (2)(b)(i), (2)(c)(i), (2)(d) and (2)(e); added (2)(b)(i)2 through 4, 6 and 7; deleted (2)(c)(i)5, relating to Section 97-29-45 and added (2)(c)(i)7 and 8; added (2)(d)(v) and (xvi), and deleted (2)(d)(x) relating to Section 97-29-3 and deleted former

(2)(d)(xvi) which read "A first-time offender fourteen (14) years of age or older adjudicated delinquent in a youth court for the crime of rape pursuant to Section 96-3-65, or sexual battery pursuant to Section 97-3-95, is subject to lifetime registration but shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration"; added (5); and made minor stylistic changes throughout.

§ 45-33-49. Disclosure to public; guidelines for sheriffs as to notification; certain registry information to be available online; participation in Dru Sjodin National Sex Offender Public website; notification of schools and day care centers.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 45-33-57. Fees.

(1) The Department of Public Safety may adopt regulations to establish fees to be charged for information requests under this chapter.

(2) The Department of Public Safety may adopt regulations to establish fees to be charged to registrants for registration, reregistration, and verification or change of address.

(3) Regulations promulgated under this section shall be duly filed with the Secretary of State under the Administrative Procedures Act.

SOURCES: Laws, 2000, ch. 499, § 19; Laws, 2005, ch. 353, § 6; Laws, 2014, ch. 424, § 2, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment added "under this chapter" to the end of (1) and added (3).

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-33-61. Access to Administrative Office of Courts' youth court data management system by sex offenders prohibited.

(1) A person convicted of a sex offense shall not access the Administrative Office of Courts' youth court data management system known as the Mississippi Youth Court Information Delivery System or "MYCIDS."

(2) This section applies to all registered sex offenders without regard to the date of conviction for a registrable offense.

SOURCES: Laws, 2012, ch. 410, § 2, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — Laws of 2012, ch. 410, § 4 provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage [April 18, 2012], and the remainder of this act shall take effect and be in force from and after July 1, 2012."

CHAPTER 35

Identification Cards

Article 1. General Provisions 45-35-1
Article 3. Personal Identification Cards for Persons With Disabilities 45-35-51

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran.
45-35-7. Expiration; renewal; fees; records; registration with Selective Service.
45-35-9. Duplicates; fee; return of original.

§ 45-35-3. Issuance of identification card by Department of Public Safety; application for card; registered sex offender's card to identify cardholder as sex offender; designation as veteran on card upon request of honorably discharged veteran.

(1) Any person six (6) years of age or older may be issued an identification card by the department which is certified by the registrant and attested by the commissioner as to true name, correct age and such other identifying data as required by Section 45-35-5.

(2) The new, renewal or duplicate identification card of a person required to register as a sex offender pursuant to Section 45-33-25 shall bear a designation identifying the cardholder as a sex offender.

(3) The commissioner is authorized to provide the new, renewal or duplicate identification card to any honorably discharged veteran as defined in Title 38 of the United States Code, and such identification card shall exhibit the letters "Vet" or any other mark identifying the person as a veteran. The veteran requesting the "Vet" designation shall present his DD-214 or equivalent document that includes a notation from the state Veterans Affairs Board that the applicant is a veteran.

SOURCES: Laws, 1988, ch. 570, § 2; Laws, 1996, ch. 322, § 2; Laws, 2001, ch. 343, § 1; Laws, 2007, ch. 392, § 15; Laws, 2012, ch. 561, § 3, eff from and after passage (approved May 23, 2012.)

Amendment Notes — The 2012 amendment added (3).

§ 45-35-7. Expiration; renewal; fees; records; registration with Selective Service.

(1)(a) Except as provided in paragraph (b) of this subsection (1), each applicant for an original or renewal identification card issued pursuant to this chapter who is entitled to issuance of such a card shall be issued a four-year card or an eight-year card, at the option of the applicant. Each card shall expire at midnight on the cardholder's birthday and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee.

(b) Any applicant who is blind, as defined in Section 43-6-1, upon payment of the fee prescribed in Section 63-1-43, shall be issued an original or renewal identification card which shall remain valid for a period of eight (8) years, shall expire at midnight on the cardholder's birthday, and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee.

(2)(a) Any applicant who is not a United States citizen, upon payment of the fee prescribed in Section 63-1-43, shall be issued an original or renewal identification card which shall expire four (4) years from date of issuance or on the expiration date of the applicant's authorized stay in the United States, whichever is the lesser period of time, and may be renewed, if the person is otherwise qualified to renew the license, within thirty (30) days of expiration.

(b) An applicant for an original or renewal identification card under paragraph (a) must present valid documentary evidence documenting that the applicant:

(i) Is a citizen or national of the United States;

(ii) Is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) Has conditional permanent residence status in the United States;

(iv) Has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) Has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into or lawful presence in the United States;

(vi) Has a pending application for asylum in the United States;

(vii) Has a pending or approved application for temporary protected status in the United States;

(viii) Has approved deferred-action status;

(ix) Has pending an application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States; or

(x) Has a valid employment authorization card issued by the United States Department of Homeland Security.

(3) The fee for the issuance of an original or renewal identification card shall be as prescribed in Section 63-1-43.

(4) Any person who, for medical reasons, surrenders his unexpired driver's license, and any person whose unexpired driver's license is suspended for medical reasons by the Commissioner of Public Safety under Section 63-1-53(2)(e), upon request shall be issued an identification card without payment of a fee. The identification card shall be valid for a period of four (4) years from its date of issue. Subsequent renewals shall be subject to the fees prescribed in Section 63-1-43.

(5) The department shall maintain a record of all identification cards issued.

(6)(a) Any male who is at least eighteen (18) years of age but less than twenty-six (26) years of age and who applies for an identification card or a renewal of an identification card under this chapter shall be registered in compliance with the requirements of Section 3 of the Military Selective Service Act, 50 USCS Appx 451 et seq., as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicant to the Selective Service System. The applicant's submission of the application shall serve as an indication that the applicant either has already registered with the Selective Service System or that he is authorizing the department to forward to the Selective Service System the necessary information for registration. The commissioner shall notify the applicant on, or as a part of, the application that his submission of the application will serve as his consent to registration with the Selective Service System, if so required. The commissioner also shall notify any male applicant under the age of eighteen (18) that he will be registered upon turning age eighteen (18) as required by federal law.

SOURCES: Laws, 1988, ch. 570, § 4; Laws, 1992, ch. 370, § 1; Laws, 1996, ch. 322, § 1; Laws, 2001, ch. 535, § 5; Laws, 2002, ch. 388, § 3; Laws, 2002, ch. 447, § 1; Laws, 2002, ch. 584, § 7; Laws, 2010, ch. 423, § 3; Laws, 2014, ch. 424, § 3, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment rewrote the section to conform the fees charged by the Department of Public Safety for nondriver identification cards to the new fee schedule.

§ 45-35-9. Duplicates; fee; return of original.

(1) If an identification card issued under this chapter is lost, destroyed or mutilated, or a new name or other updated information is required, the person to whom it was issued may obtain a duplicate by furnishing the same identifying data as for an original card and paying the fee prescribed in Section 63-1-43.

(2) Any person who loses an identification card and who, after obtaining a duplicate, finds the original card shall promptly surrender the original card to the department.

SOURCES: Laws, 1988, ch. 570, § 5; Laws, 2002, ch. 584, § 2; Laws, 2014, ch. 424, § 4, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment rewrote (1) to conform the fees charged by the Department of Public Safety for nondriver identification cards to the new fee schedule.

ARTICLE 3.

PERSONAL IDENTIFICATION CARDS FOR PERSONS WITH DISABILITIES.

SEC.

45-35-53. Issuance of personal identification card; information to be included on card.
45-35-55. Issuance of cards to persons with permanent disabilities and renewal thereof; issuance of cards to persons with temporary disabilities and renewal thereof.
45-35-65. Fee.

§ 45-35-53. Issuance of personal identification card; information to be included on card.

(1) The Department of Public Safety shall issue personal identification cards to persons with disabilities who make application to the department in accordance with rules and regulations prescribed by the commissioner by filing with the Secretary of State under the Administrative Procedures Act. The identification card for persons with disabilities shall prominently display the international handicapped symbol and, in addition to any other information required by this article, may contain a recent color photograph of the applicant and the following information:

(a) Full legal name;
(b) Address of residence;
(c) Birth date;
(d) Date identification card was issued;
(e) Date identification card expires;
(f) Sex;
(g) Height;
(h) Weight;
(i) Eye color;
(j) Location where the identification card was issued;
(k) Signature of person identified or facsimile thereof; and
(*l*) Such other information as required by the department.

(2) The identification card for persons with disabilities shall bear an identification card number which shall not be the same as the applicant's social security number. The commissioner shall prescribe the form of identification cards issued pursuant to this article to persons who are not United States citizens. The identification cards of such persons shall include a number and any other identifying information prescribed by the commissioner.

SOURCES: Laws, 2005, ch. 464, § 2; Laws, 2014, ch. 424, § 5, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment, in (1), inserted "by filing with the Secretary of State under the Administrative Procedures Act" following "commissioner" at the end of the first sentence; added "and" at the end of (1)(k); deleted (1)(*l*), which read "Fingerprint of person identified; and"; and redesignated former (1)(m) as present (1)(*l*); in (2), in the first sentence, deleted "shall bear the signatures of the commissioner and the Governor and" following "identification card for persons with disabilities," and "unless the person specifically requests that the social security number be used" following "the applicant's social security number," and at the end of the second sentence, deleted "and who do not possess a social security number issued by the United States government" following "who are not United States citizens."

Cross References — Administrative Procedures Act, see §§ 25-43-1.101 et seq.

§ 45-35-55. Issuance of cards to persons with permanent disabilities and renewal thereof; issuance of cards to persons with temporary disabilities and renewal thereof.

(1) The identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of four (4) years, shall expire at midnight on the cardholder's birthday, and may be renewed any time within six (6) months before the expiration date of the card upon application and payment of the required fee. The identification cards shall be issued to persons with disabilities upon presentation of the current sworn affidavit of at least one (1) medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal.

(2) The identification card for persons with temporary disabilities shall be issued to a person with a temporary disability upon presentation of a sworn affidavit of at least one (1) medical doctor attesting to the disability and estimating the duration of the disability. Temporary disability identification cards shall be issued for periods of six (6) months. A current affidavit of a medical doctor attesting to the continuance of the disability shall be presented at each request for renewal thereafter.

SOURCES: Laws, 2005, ch. 464, § 3; Laws, 2014, ch. 424, § 6, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment, substituted the present (1) for the former (1), which read: "(1) The identification card for persons with disabilities shall be issued to a person with a permanent disability for a period of four (4) years and shall be renewable on the applicant's birthday in the fourth year following such issuance. The identification cards shall be issued to persons: (a) With obvious permanent disabilities without further verification of disability; and (b) With disabilities which are not obvious upon presentation of the current sworn affidavit of at least one (1) medical doctor attesting to such permanent disability. A current affidavit shall be presented at each request for renewal"; and in (2), substituted "the" for "such" in three places, "Temporary disability" for "Such", and inserted "temporary" following "identification card for persons with."

§ 45-35-65. Fee.

The department shall collect a fee for an identification card for persons with disabilities as prescribed in Section 63-1-43.

SOURCES: Laws, 2005, ch. 464, § 8; Laws, 2014, ch. 424, § 7, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment deleted "of Fifteen Dollars ($15.00)" following "The department shall collect a fee" and substituted "as prescribed in Section 63-1-43" for ", which fee shall be deposited in the State Treasury in the same manner as motor vehicle driver's license fees."

CHAPTER 43

William Lee Montjoy Pool Safety Act

Sec.

45-43-1. Short title.
45-43-3. Definitions.
45-43-5. Applicability.
45-43-7. Certain property owners or owners associations that own, control or maintain a pool required to completely enclose pool yard.
45-43-9. Requirements for gates and latches.
45-43-11. Applicability to existing pool yard enclosures.
45-43-13. Requirements regarding doors that open into pool yard.
45-43-15. Use of a wall of a building as part of pool yard enclosure; when permitted.
45-43-17. Compliance with Sections 45-43-13 and 45-43-15.
45-43-19. Inspection, maintenance, repair and upkeep of pool yard enclosures, gates, windows, doors, latching devices, etc.
45-43-21. Compliance with chapter; exceeding chapter standards.
45-43-23. Enforcement of chapter.
45-43-25. Applicability to other bodies of water.
45-43-27. Relation to other laws, regulations.
45-43-29. Remedies not exclusive.
45-43-31. Construction and purpose.

§ 45-43-1. Short title.

This chapter shall be known and cited as the "William Lee Montjoy Pool Safety Act."

SOURCES: Laws, 2012, ch. 508, § 1, eff from and after July 1, 2012.

§ 45-43-3. Definitions.

The following words shall have the following meanings for purposes of this chapter:

(a) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(b) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(c) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(d) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two (2) doors are hinged and closable so that the edge of one (1) door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one (1) of the two (2) doors.

(e) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after July 1, 2012, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(f)(i) "Keyless bolting device" means a door lock not in the doorknob that locks:

1. With a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

2. By a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three (3) case-hardened screws at least three (3) inches in length. One-half (½) of the central plate must overlap the interior surface of the door and the other one-half (½) of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

3. By a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three (3) inches in length and must be screwed into the doorframe stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the doorframe stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(ii) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded night latch, foot bolt, or other lock or latch.

(g) "Multiunit rental complex" means two (2) or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium, cooperative, or townhome project. The term does not include:

(i) A facility primarily renting rooms to overnight guests; or

(ii) A single-family home or adjacent single-family homes that are not part of a condominium, cooperative, or townhome project.

(h) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over eighteen (18) inches deep, located at ground level, above ground, below ground, or indoors.

(i) "Pool yard" means an area that contains a pool.

(j) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(k) "Private club" means country club, golf club, tennis club, yacht club, gym or any similar association or organization that provides services or facilities to its members and that is not usually open to the public.

(*l*) "Property owners association" means an association of property owners for a residential subdivision, a condominium, cooperative or townhome project, or other project involving residential dwellings.

(m) "Sliding-door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(n) "Sliding-door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(o) "Sliding-door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(p) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(q) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

SOURCES: Laws, 2012, ch. 508, § 2, eff from and after July 1, 2012.

§ 45-43-5. Applicability.

The provisions of this chapter shall only apply to: a pool owned, controlled or maintained by the owner of a multiunit rental complex, property owners association, or private club; and doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or a condominium, cooperative,

or townhome project. This chapter does not apply to any private club that does not allow members or guests under the age of twelve (12) or to any multiunit rental complex that does not allow residents under the age of twelve (12).

SOURCES: Laws, 2012, ch. 508, § 3, eff from and after July 1, 2012.

§ 45-43-7. Certain property owners or owners associations that own, control or maintain a pool required to completely enclose pool yard.

(1) Except as otherwise provided by Section 45-43-11, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(2) The height of the pool yard enclosure must be at least forty-eight (48) inches as measured from the ground on the side away from the pool.

(3) Openings under the pool yard enclosure may not allow a sphere four (4) inches in diameter to pass under the pool yard enclosure.

(4) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least forty-five (45) inches, the openings may not allow a sphere four (4) inches in diameter to pass through the enclosure.

(5) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than forty-five (45) inches, the openings may not allow a sphere one and three-fourths (1-¾) inches in diameter to pass through the enclosure.

(6) The use of chain-link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after July 1, 2012. The use of diagonal fencing members that are lower than forty-nine (49) inches above the ground is prohibited for a new pool yard enclosure that is constructed after July 1, 2012.

(7) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than one and three-fourths (1-¾) inches in any direction.

(8) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(9) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(10) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 45-43-13 and 45-43-15.

(11) The owner of a multiunit rental complex with a pool, or a property owners association that owns, controls or maintains a pool, is not required to:

(a) Build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(b) Conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

SOURCES: Laws, 2012, ch. 508, § 4, eff from and after July 1, 2012.

§ 45-43-9. Requirements for gates and latches.

(1) Except as otherwise provided by Section 45-43-11, a gate in a fence or wall enclosing a pool yard as required by Section 45-43-7 shall:

(a) Have a self-closing and self-latching device;

(b) Have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(c) Open outward away from the pool yard.

(2) Except as otherwise provided by subsection (3) of this section and Section 45-43-11, a gate latch must be installed so that it is at least sixty (60) inches above the ground, except that it may be installed lower if:

(a) The latch is installed on the pool yard side of the gate only and is at least three (3) inches below the top of the gate; and

(b) The gate or enclosure has no opening greater than one-half (½) inch in any direction within eighteen (18) inches from the latch, including the space between the gate and the gatepost to which the gate latches.

(3) A gate latch may be located forty-two (42) inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

SOURCES: Laws, 2012, ch. 508, § 5, eff from and after July 1, 2012.

§ 45-43-11. Applicability to existing pool yard enclosures.

(1) If a pool yard enclosure is constructed or modified before July 1, 2012, the provisions of this chapter shall not apply, except that any gate in a pool yard enclosure shall conform to Section 45-43-9 no later than January 1, 2013.

(2) This chapter provides no exemption from any local ordinance that may apply to the pool yard enclosure.

(3) A pool yard enclosure modified on or after July 1, 2012, shall conform with this section and Sections 45-43-7 and 45-43-9 as a part of the modification.

SOURCES: Laws, 2012, ch. 508, § 6, eff from and after July 1, 2012.

§ 45-43-13. Requirements regarding doors that open into pool yard.

(1) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after July 1, 2012.

(2) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for initial construction of the building or pool is before July 1, 2012, and the pool yard enclosure complies with subsection (3), (4) or (5) of this section, as applicable.

(3) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(a) Latch that automatically engages when the door is closed;

(b) Spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(c) Keyless bolting device that is installed not less than thirty-six (36) inches or more than forty-eight (48) inches above the interior floor.

(4) If French doors of a building open to the pool yard, one (1) of the French doors must comply with subsection (3)(a) of this section and the other door must have:

(a) A keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(b) A bolt with at least a three-fourths (¾) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a three-fourths (¾) inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(5) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(a) A sliding-door handle latch or sliding-door security bar that is installed not more than forty-eight (48) inches above the interior floor; and

(b) A sliding-door pin lock that is installed not more than forty-eight (48) inches above the interior floor.

(6) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(7) A keyed dead bolt, keyless bolting device, sliding-door pin lock, or sliding-door security bar installed before July 1, 2012, may be installed not more than fifty-four (54) inches from the floor.

(8) A keyed dead bolt or keyless dead bolt, as described by Section 45-43-3, installed in a dwelling on or after July 1, 2012, must have a bolt with a throw of not less than one (1) inch.

SOURCES: Laws, 2012, ch. 508, § 7, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a code reference in subsection (8). The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 45-43-15. Use of a wall of a building as part of pool yard enclosure; when permitted.

A wall of a building constructed before July 1, 2012, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after July 1, 2012, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

SOURCES: Laws, 2012, ch. 508, § 8, eff from and after July 1, 2012.

§ 45-43-17. Compliance with Sections 45-43-13 and 45-43-15.

Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 45-43-13 and 45-43-15.

SOURCES: Laws, 2012, ch. 508, § 9, eff from and after July 1, 2012.

§ 45-43-19. Inspection, maintenance, repair and upkeep of pool yard enclosures, gates, windows, doors, latching devices, etc.

(1) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair and keep in good working order the pool yard enclosures, gates and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall exercise ordinary and reasonable care to maintain, repair and keep in good working order the window latches, sliding-door handle latches, sliding-door pin locks, and sliding-door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement.

(3) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every thirty-one (31) days.

(4) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circum-

stances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

SOURCES: Laws, 2012, ch. 508, § 10, eff from and after July 1, 2012.

§ 45-43-21. Compliance with chapter; exceeding chapter standards.

(1) Except as provided by subsection (2) of this section and Section 45-43-23, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law or any other law.

(2) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or townhome project with a pool or a property owners association that owns, controls or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted by the State Board of Health under Section 45-43-23. A tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(3) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on July 1, 2012.

SOURCES: Laws, 2012, ch. 508, § 11, eff from and after July 1, 2012.

§ 45-43-23. Enforcement of chapter.

(1) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(a) A court order directing the owner or property owners association to comply with this chapter;

(b) A judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(c) A judgment against the owner or property owners association for attorney's fees if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious or grossly negligent actions; or

(d) A judgment against the owner or property owners association for a civil penalty of not more than Five Thousand Dollars ($5,000.00) if the owner or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association; the court may

award reasonable attorney's fees and costs to the prevailing party in an action brought under this subsection (1)(d).

(2) The Attorney General, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

SOURCES: Laws, 2012, ch. 508, § 12, eff from and after July 1, 2012.

§ 45-43-25. Applicability to other bodies of water.

The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

SOURCES: Laws, 2012, ch. 508, § 13, eff from and after July 1, 2012.

§ 45-43-27. Relation to other laws, regulations.

Except to the extent that any local or state regulation or local ordinance imposes a stricter standard, the duties established by this chapter for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or townhome project and a property owners association supersede those established by common law and any local or state agency regulation and local ordinances relating to duties to inspect, install, repair or maintain:

(a) Pool yard enclosures;

(b) Pool yard enclosure gates and gate latches, including self-closing and self-latching devices;

(c) Keyed dead bolts, keyless bolting devices, sliding-door handle latches, sliding-door security bars, self-latching and self-closing devices, and sliding-door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and

(d) Latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

SOURCES: Laws, 2012, ch. 508, § 14, eff from and after July 1, 2012.

§ 45-43-29. Remedies not exclusive.

The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedures.

SOURCES: Laws, 2012, ch. 508, § 15, eff from and after July 1, 2012.

§ 45-43-31. Construction and purpose.

The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

SOURCES: Laws, 2012, ch. 508, § 16, eff from and after July 1, 2012.

CHAPTER 45

Mississippi Conveyance Safety Act

SEC.
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45-45-5. Equipment covered by chapter.
45-45-7. Equipment not covered by chapter.
45-45-9. Definitions.
45-45-11. Persons authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire conveyances.
45-45-13. Promulgation of regulations for equipment, fees and licenses regulated by chapter.
45-45-15. Application process; fee schedule; applicant qualifications and abilities; terms of license; renewal.
45-45-17. Reasons license may be suspended, revoked or subject to civil penalty.
45-45-19. Registration of conveyances.
45-45-21. Inspection, testing installation, service and maintenance of conveyances.
45-45-23. Permit required before erecting, constructing, installing or altering conveyances; application for permit; revocation or expiration of permit.
45-45-25. New conveyance installations to be performed by licensed elevator contractors; certificate of operation; annual renewal.
45-45-27. Inspection and testing of conveyances.
45-45-29. Penalty for violation of chapter.
45-45-31. Prospective application of chapter.
45-45-33. Construction of chapter.
45-45-35. Mississippi Elevator and Conveyance Fund created; source and use of monies in fund.
45-45-37. Promulgation of rules and regulations for licensing and enforcement of chapter.

SEC.
45-47-1. DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority [Section contingent upon funding, see subsection (6).]

§ 45-45-1. Short title.

This chapter shall be known and may be cited as the Mississippi Conveyance Safety Act.

SOURCES: Laws, 2013, ch. 405, § 1, eff from and after July 1, 2013.

§ 45-45-3. Purpose of chapter.

The purpose of this chapter is to provide for the safety of conveyance equipment and personnel, and to promote public safety awareness. This chapter establishes the minimum standards for conveyance personnel and services. The use of unsafe or defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Conveyance personnel performing work covered by this chapter shall, by documented training and/or experience, be familiar with the operation and safety functions of the components and equipment. Training and experience shall include, but not be limited to, recognizing the safety hazards and performing the procedures required under this chapter.

SOURCES: Laws, 2013, ch. 405, § 2, eff from and after July 1, 2013.

§ 45-45-5. Equipment covered by chapter.

This chapter covers the design, construction, operation, inspection, testing, maintenance, alteration and repair of the following equipment, its associated parts, and its hoistways, except as provided by Section 45-45-7:

(a) Hoisting and lowering mechanisms equipped with a car or platform that moves between two (2) or more landings. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, ASME A17.3 and ASME A18.1):

(i) Elevators;

(ii) Platform lifts;

(iii) Stairway chairlifts.

(b) Power-driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, and ASME A17.3):

(i) Escalators;

(ii) Moving walks.

(c) Hoisting and lowering mechanisms equipped with a car that serves two (2) or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes, but is not limited to, the following (also see ASME A17.1/CSA B44, ASME A17.7/CSA B44.7, and ASME A17.3):

(i) Dumbwaiters;

(ii) Material lifts and dumbwaiters with automatic transfer devices.

SOURCES: Laws, 2013, ch. 405, § 3, eff from and after July 1, 2013.

§ 45-45-7. Equipment not covered by chapter.

(1) Equipment not covered by this chapter includes, but is not limited to, the following:

(a) Material hoists within the scope of ANSI A10.5;

(b) Man lifts within the scope of ASME A90.1;

(c) Mobile scaffolds, towers and platforms within the scope of ANSI A92;

(d) Powered platforms and equipment for exterior and interior maintenance within the scope of ANSI A120.1;

(e) Conveyors and related equipment within the scope of ASME B20.1;

(f) Cranes, derricks, hoists, hooks, jacks and slings within the scope of ASME B30;

(g) Industrial trucks within the scope of ASME B56;

(h) Portable equipment, except for portable escalators that are covered by ASME A17.1/CSA B44 and ASME A17.7/CSA B44.7;

(i) Tiering or piling machines used to move materials to and from storage located and operating entirely within one (1) story;

(j) Equipment for feeding or positioning materials at machine tools, printing presses, or similar equipment;

(k) Kip or furnace hoists;

(*l*) Wharf ramps;

(m) Railroad car lifts or dumpers;

(n) Line jacks, false cars, shafters, moving platforms and similar equipment used for installing an elevator by an elevator contractor licensed in this state.

(2) The provisions of this chapter shall not apply to any conveyance that is located in a private residence.

SOURCES: Laws, 2013, ch. 405, § 4, eff from and after July 1, 2013.

§ 45-45-9. Definitions.

For purposes of this chapter, the following terms are defined as follows, unless the context clearly indicates otherwise:

(a) "Administrator" means the person or persons designated by the Commissioner of Insurance.

(b) "ANSI" means the American National Standards Institute.

(c) "ASCE" means the American Society of Civil Engineers.

(d) "ASCE 21" means the American Society of Civil Engineers Automated People Mover Standards.

(e) "ASME" means the American Society of Mechanical Engineers.

(f) "ASME A17.1/CSA B44" means the Safety Code for Elevators and Escalators, an American National Standard.

(g) "ASME A17.3" means the Safety Code for Existing Elevators and Escalators, an American National Standard.

(h) "ASME A17.7/CSA B44.7" means the Performance-Based Safety Code for Elevators and Escalators, an American National Standard.

(i) "ASME A18.1" means the Safety Standard for Platform Lifts and Stairway Chairlifts, an American National Standard.

(j) "Automated people mover" means an installation defined as an "automated people mover" in ASCE 21.

(k) "Certificate of Operation" means a document that indicates that the conveyance has had the safety inspection and tests required by this chapter.

(*l*) "Commissioner" means Commissioner of Insurance.

(m) "Conveyance" means any elevator, dumbwaiter, escalator, moving sidewalk, platform lift, stairway chairlift or automated people mover.

(n) "Elevator" means an installation defined as an "elevator" in ASME A17.1/CSA B44.

(o) "Elevator contractor" means any sole proprietor, firm, corporation or other business entity engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators and other conveyances.

(p) "Elevator helper or apprentice" means a person who works under the general direction of a licensed elevator mechanic.

(q) "Elevator inspector" means any person who specializes in the design, testing and maintenance inspection of elevators and other conveyances.

(r) "Elevator mechanic" means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators or other conveyances. For the purposes of this chapter, a certified elevator technician is considered an elevator mechanic.

(s) "Escalator" means an installation defined as an "escalator" in ASME A17.1/CSA B44.

(t) "Existing installation" means an installation defined as an "installation, existing" in ASME A17.1/CSA B44.

(u) "License" means a written license issued under this chapter.

(v) "Licensee" means the elevator mechanic, elevator contractor or elevator inspector who possesses a license issued under this chapter.

(w) "Limited Elevator Contractor" means any sole proprietor, firm or company who employs individuals to carry on a business of erecting, constructing, installing, altering, servicing, repairing, or maintaining platform lifts and stairway chairlifts within any building or structure.

(x) "Limited Elevator Mechanic" means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing or maintaining platform lifts and stairway chairlifts.

(y) "Moving walk" or "moving sidewalk" means an installation defined as a "moving walk" in ASME A17.1/CSA B44.

SOURCES: Laws, 2013, ch. 405, § 5, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (t) by substituting "installation defined as an" for

"installation as defined as an." The Joint Committee ratified the correction at its August 1, 2013, meeting.

§ 45-45-11. Persons authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire conveyances.

(1) Only a person who is working under the direct supervision of a licensed elevator contractor and who possesses an elevator mechanic license is authorized to erect, construct, alter, replace, maintain, test, remove, dismantle or wire from the mainline feeder terminals on the controller of any conveyance contained within buildings or structures in this state. Supervision by a licensed elevator contractor is not required for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure whereby no access is permitted to endanger the safety and welfare of a person.

(2) Only a person who possesses an elevator inspector license is authorized to inspect conveyances identified in this chapter.

SOURCES: Laws, 2013, ch. 405, § 6, eff from and after July 1, 2013.

§ 45-45-13. Promulgation of regulations for equipment, fees and licenses regulated by chapter.

(1) The Commissioner of Insurance shall promulgate regulations for the equipment, fees and licenses regulated by this chapter. The regulations shall consider the latest Safety Code for Elevators and Escalators, ASME A17.1/CSA B44; the Safety Code for Existing Elevators and Escalators, ASME A17.3; the Performance-Based Safety Code for Elevators and Escalators, ASME A17.7/CSA B44.7, the Safety Standards for Platform Lifts and Stairway Chairlifts, ASME,A18.1; and Standard for the Qualification of Elevator Inspectors, ASME QEI-1.

(2) The licensing authority shall consult with engineering authorities and organizations that are concerned with standard safety codes, the rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances and the qualifications that are adequate, reasonable and necessary for licensing as an elevator mechanic, contractor and inspector.

(3) Exceptions and variances from the literal requirements of applicable standards and regulations may be granted in cases where an exception or variance would not jeopardize the public safety and welfare.

SOURCES: Laws, 2013, ch. 405, § 7, eff from and after July 1, 2013.

§ 45-45-15. Application process; fee schedule; applicant qualifications and abilities; terms of license; renewal.

(1) The Commissioner of Insurance shall develop and implement an application process and fee schedule for licenses designated in this chapter. The fee schedule adopted by the commissioner must be similar to those fees charged for similar services by the surrounding states.

(2)(a) Applicants for a mechanic license must demonstrate one (1) of the following qualifications and abilities:

(i) An acceptable combination of documented experience and education credits of, within the last five (5) years, not less than four (4) years' work experience in the elevator industry, whether in construction, maintenance or service and repair, or any combination thereof, as verified by current and previous employers, and satisfactory completion of a written examination approved by the administrator on the most recent applicable codes and standards;

(ii) Certificates of completion of an apprenticeship program for elevator mechanics having standards substantially equal to those of this chapter, and registered with the Bureau of Apprenticeship and Training or the United States Department of Labor.

(b) A license shall be issued to an applicant who holds a valid license from a state having standards substantially equal to those of this chapter without examination and upon verification of qualification by the administrator.

(c) Any person who furnishes the licensing authority with acceptable proof that the person has worked as an elevator constructor, maintenance or repair mechanic, upon making application for a license, shall be entitled to receive an elevator mechanic license without examination if the person has worked without direct and immediate supervision for a licensed elevator contractor for not less than four (4) years immediately before July 1, 2013. To be eligible to be licensed without examination under this paragraph, the person must make an application for licensure on or before July 1, 2014. A license is not required for an elevator helper or apprentice; however, a licensed mechanic is limited to directly supervise only three (3) helpers or apprentices.

(3) Applicants for an inspector license must meet the standards as set forth by the Commissioner of Insurance.

(4)(a) Applicants for an elevator contractor license must demonstrate that they have in their employ licensed elevator mechanic(s).

(b) An elevator contractor license may be issued to an applicant who holds an equivalent valid license from a state having standards substantially equal to those of this chapter.

(5)(a) Applicants for a limited elevator contractor license must demonstrate that they have in their employ licensed elevator mechanic(s).

(b) A limited elevator contractor license may be issued to an applicant who holds an equivalent valid license from a state having standards substantially equal to those of this chapter.

(6)(a) Except when otherwise expressly provided, licenses issued under this chapter shall be valid for two (2) years.

(b) The renewal of all licenses granted under the provisions of this section may be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees. The courses shall be subject to approval by the licensing authority administrator and shall consist of not less than eight (8) hours of instruction that shall be attended and completed within one (1) year immediately preceding such license renewal.

(c) The commissioner, upon written request, may grant exception to or extend the time in which a licensee must comply with the continuing educational requirements of this section for reasons of poor health, military service or other reasonable or just causes.

SOURCES: Laws, 2013, ch. 405, § 8, eff from and after July 1, 2013.

§ 45-45-17. Reasons license may be suspended, revoked or subject to civil penalty.

(1) A license issued pursuant to this chapter may be suspended, revoked or subject to civil penalty by the administrator upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application.

(b) Fraud, misrepresentation or bribery in securing a license.

(c) Failure to notify the licensing authority and the owner or lessee of an elevator or other conveyance in any condition that is not in compliance with this chapter.

(2) No license shall be suspended, revoked, denied or subject to civil penalty until after a hearing before the administrator upon notice and hearing to the licensee or applicant of at least twenty (20) days at the last known address appearing on the license or application, served personally or by registered mail. The administrator may suspend or revoke the license, deny the application, levy a civil penalty, or dismiss the proceeding.

(3) Any person, sole proprietor, firm, or corporation whose license is revoked, suspended or subject to civil penalty, or whose license application is denied, may appeal from such determination to the Commissioner of Insurance, which shall within thirty (30) days thereafter, hold a hearing, of which at least fifteen (15) days' written notice shall be given to all interested parties. The commissioner shall, within thirty (30) days after such hearing, issue a decision.

(4) Any person, sole proprietor, firm or corporation whose license is revoked suspended or subject to civil penalty, or whose license application is denied, may appeal from such determination to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within twenty (20) days of the final ruling.

SOURCES: Laws, 2013, ch. 405, § 9, eff from and after July 1, 2013.

§ 45-45-19. Registration of conveyances.

(1) On or before December 31, 2014, the owner or lessee of every conveyance not exempted under this chapter shall register with the Commissioner of Insurance each conveyance owned or operated by the owner or lessee, giving the type, rated load and speed, name of manufacturer, its location, the purpose for which it is used, and such additional information as may be required.

(2) Conveyances placed in service on or after July 1, 2013, shall be registered at the time they are completed and placed in service.

SOURCES: Laws, 2013, ch. 405, § 10, eff from and after July 1, 2013.

§ 45-45-21. Inspection, testing installation, service and maintenance of conveyances.

A licensee shall inspect, test, install, service and maintain conveyances in compliance with the provisions and standards of the State Fire Prevention and Building Code.

SOURCES: Laws, 2013, ch. 405, § 11, eff from and after July 1, 2013.

§ 45-45-23. Permit required before erecting, constructing, installing or altering conveyances; application for permit; revocation or expiration of permit.

(1) A permit must be obtained before a conveyance covered by this chapter shall be erected, constructed, installed or altered within buildings or structures in this state. Where any material alteration is made, the device shall conform to applicable requirements as determined by the commissioner. A permit may be issued only to a licensed elevator contractor, and a copy of the permit shall be kept at the construction site at all times while the work is in progress.

(2) Each application for a permit shall be accompanied by copies of specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room/machinery space and the equipment to be installed, relocated or altered; all structural supporting members thereof, including foundations; and shall specify all materials to be employed and all loads to be supported or conveyed. The plans and specifications shall be sufficiently complete to illustrate all details of construction and design.

(3) Permits may be revoked for the following reasons:

(a) Where any false statement or misrepresentation as to the material facts was made in the application, plans, or specifications on which the permit was based.

(b) Where the permit was issued in error and should not have been issued in accordance with the code.

(c) Where the work detailed under the permit is not being performed in accordance with the provisions of the application, plans or specifications or with the code or conditions of the permit.

(d) Where the elevator contractor to whom the permit was issued fails or refuses to comply with a stop work order.

(4)(a) A permit expires if the work authorized by a permit is not commenced within six (6) months after the date of issuance.

(b) For good cause, an extension of the permit may be granted.

(5) A permit is not required for a repair.

(6) The commissioner may by rules and regulations establish a fee schedule for the permits and certifications issued under this section. The fee schedule must be similar to fees charged for the same services in surrounding states.

SOURCES: Laws, 2013, ch. 405, § 12, eff from and after July 1, 2013.

§ 45-45-25. New conveyance installations to be performed by licensed elevator contractors; certificate of operation; annual renewal.

(1) All new conveyance installations shall be performed by a licensed elevator contractor who must certify compliance with this chapter upon completion of the work. Before any conveyance is used, the property owner or lessee must obtain a certificate of operation. It is the responsibility of the licensed elevator contractor to complete and submit first-time registration(s) for new installations.

(2) A certificate of operation is renewable annually, except that certificates issued for platform and stairway chairlifts for private residences shall be valid for a period of three (3) years. A certificate of operation must be clearly displayed on or in each conveyance or in the machine room/machinery space for use for the benefit of code enforcement staff.

SOURCES: Laws, 2013, ch. 405, § 13, eff from and after July 1, 2013.

§ 45-45-27. Inspection and testing of conveyances.

(1) It shall be the responsibility of the owner of all new and existing conveyances located in any building or structure to have the conveyance inspected annually (ASME A17.1/CSA B44, category one) by a licensed elevator inspector who shall supply the property owner or lessee and the licensing authority with a written inspection report that describes any and all code violation. Property owners shall have thirty (30) days from the date of the published inspection report to be in full compliance with correcting the violations.

(2)(a) It shall be the responsibility of the owner of all conveyances to hire an elevator contractor or a limited elevator contractor to supervise the required tests at intervals in compliance with the ASME A17.1/CSA B44 Appendix N, ASME A18.1 and ASCE 21.

(b) All tests shall be performed by a licensed elevator mechanic.

SOURCES: Laws, 2013, ch. 405, § 14, eff from and after July 1, 2013.

§ 45-45-29. Penalty for violation of chapter.

Any owner or lessee who shall violate any of the provisions of this chapter, upon conviction thereof, shall be fined in an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00).

SOURCES: Laws, 2013, ch. 405, § 15, eff from and after July 1, 2013.

§ 45-45-31. Prospective application of chapter.

The provisions of this chapter are not retroactive unless otherwise stated and equipment shall be required to comply with the applicable code at the date of its installation or within the period determined by the Commissioner of Insurance. If, upon the inspection of any device covered by this chapter, the equipment is found in dangerous condition or there is an immediate hazard to those riding or using such equipment, the administrator shall notify the owner of the condition and any corrective action taken, or required by the administrator, and shall order such alterations or additions as may be deemed necessary to eliminate the dangerous condition. Further, upon a finding of a danger to the public, the administrator may order the immediate cessation of the use of such device.

SOURCES: Laws, 2013, ch. 405, § 16, eff from and after July 1, 2013.

§ 45-45-33. Construction of chapter.

This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator or other related mechanism covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefor or any liability to any person for whatsoever reason by the enactment of this chapter or any acts or omissions arising hereunder.

SOURCES: Laws, 2013, ch. 405, § 17, eff from and after July 1, 2013.

§ 45-45-35. Mississippi Elevator and Conveyance Fund created; source and use of monies in fund.

There is created a special fund to be designated as the "Mississippi Elevator and Conveyance Fund." The fund shall consist of monies appropriated by the act of the Legislature and monies collected by the Commissioner of Insurance for licenses, fees and penalties levied pursuant to this chapter. Unexpended amounts remaining in the fund at the end of a fiscal year shall not

lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. The Commissioner of Insurance may contract with a third party to assist the commissioner with carrying out the purposes of this chapter. The Commissioner of Insurance may use the monies in this fund to defray the costs of administration of this chapter, including, but not limited to, using the monies in this fund to pay a third party a reasonable fee for its services.

SOURCES: Laws, 2013, ch. 405, § 18, eff from and after July 1, 2013.

§ 45-45-37. Promulgation of rules and regulations for licensing and enforcement of chapter.

The Commissioner of Insurance shall have authority to promulgate rules and regulations for licensing and enforcement for all provisions in this chapter.

SOURCES: Laws, 2013, ch. 405, § 19, eff from and after July 1, 2013.

CHAPTER 47

DNA Data Bank

§ 45-47-1. DNA samples to be collected from persons arrested for commission or attempted commission of certain crimes of violence; destruction of sample; penalties for obtaining, receiving or disseminating information in DNA data bank without authority [Section contingent upon funding, see subsection (6).]

(1) Every person who is arrested for the commission or attempted commission of a crime of violence as defined in Section 97-3-2 shall provide a biological sample for DNA testing to jail or detention center personnel upon booking. The analysis shall be performed by the Mississippi Crime Lab or other entity designated by the Department of Public Safety, and the results shall be maintained by the Crime Lab according to standard protocols adopted for maintenance of DNA records in conformity to federal guidelines for the maintenance of such records.

(2)(a) A DNA sample shall be collected by an individual who is trained in the collection procedures that the Crime Laboratory uses.

(b) The clerk of the court shall notify the Crime Lab of the final disposition of criminal proceedings. The Crime Lab shall destroy the sample and delete from the database all records thereof if there is no other pending qualifying warrant or capias for an arrest or felony conviction that would require that the sample remain in the DNA data bank and:

(i) The charge for which the sample was taken is dismissed;

(ii) The defendant is acquitted at trial or convicted of a lesser-included misdemeanor offense that is not an offense listed in this section;

(iii) No charge was filed within the statute of limitations, if any; or

(iv) No conviction has occurred, at least three (3) years have passed since the date of arrest, and there is no active prosecution.

(3)(a) Any person who, without authority, disseminates information contained in the DNA data bank shall be guilty of a misdemeanor.

(b) Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA data bank, knowing that the dissemination, receipt or use is for a purpose other than as authorized by law, shall be guilty of a misdemeanor.

(c) Except as authorized by law, any person who obtains or attempts to obtain any sample for purposes of having DNA analysis performed shall be guilty of a felony.

(4)(a) Any person convicted under subsection (3)(a) shall be sentenced to a fine not to exceed Five Hundred Dollars ($500.00) or confinement in the county jail not to exceed thirty (30) days, or both.

(b) Any person convicted under subsection (3)(b) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or confinement in the county jail not to exceed six (6) months, or both.

(c) Any person convicted under subsection (3)(c) shall be sentenced to a fine not to exceed One Thousand Dollars ($1,000.00) or commitment to the custody of the Department of Corrections not to exceed two (2) years, or both.

(5) A defendant may file a motion with the court to seek destruction of the DNA sample and deletion of such information from the record under this section.

(6) This section shall not take effect unless the Legislature has provided sufficient funds for implementing the provisions of this section, including training, as certified by the Joint Legislative Budget Committee.

SOURCES: Laws, 2014, ch. 502, § 1, effective from and after July 1, 2014.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony or misdemeanor violation, see § 99-19-73.

TITLE 47

PRISONS AND PRISONERS; PROBATION AND PAROLE

Chapter 4.	Privately Operated Correctional Facilities	47-4-1
Chapter 5.	Correctional System	47-5-1
Chapter 7.	Probation and Parole	47-7-1

CHAPTER 4

Privately Operated Correctional Facilities

SEC.

47-4-1. Privately operated correctional facilities authorized for federal and other states' inmates.

§ 47-4-1. Privately operated correctional facilities authorized for federal and other states' inmates.

(1) It is lawful for there to be located within Wilkinson County and Leflore County a correctional facility operated entirely by a private entity pursuant to a contractual agreement between such private entity and the federal government, any state, or a political subdivision of any state to provide correctional services to any such public entity for the confinement of inmates subject to the jurisdiction of such public entity. Any person confined in such a facility pursuant to the laws of the jurisdiction from which he is sent shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of such inmates.

(2) The Department of Corrections shall contract with the Board of Supervisors of Leflore County for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Leflore County. Any contract must comply with the requirements of Section 47-5-1211 through Section 47-5-1227.

(3) It is lawful for any county to contract with a private entity for the purpose of providing correctional services for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in such a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the county or the State of Mississippi, as the case may be, for any illegal or tortious actions of the inmates.

(4) It is lawful for there to be located within any county a correctional facility operated entirely by a private entity and the federal government to provide correctional services to the United States for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete respon-

sibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

A person convicted of simple assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than five (5) years, or both.

A person convicted of aggravated assault on an employee of a private correctional facility while such employee is acting within the scope of his or her duty or employment shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(5) The Department of Corrections may contract with the Tallahatchie County Correctional Facility authorized in Chapter 904, Local and Private Laws of 1999, for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Tallahatchie County. Any contract must comply with the requirements of Section 47-5-1211 through Section 47-5-1227. No state inmate shall be assigned to the Tallahatchie County Correctional Facility unless the inmate cost per day is at least ten percent (10%) less than the inmate cost per day for housing a state inmate at a state correctional facility.

(6) If a private entity houses state inmates, the private entity shall not displace state inmate beds with federal inmate beds unless the private entity has obtained prior written approval from the Commissioner of Corrections.

(7) It is lawful for there to be located within Leflore County a correctional facility operated entirely by a private entity pursuant to a contractual agreement between such private entity and the federal government, the State of Mississippi, or Leflore County for the incarceration of federal inmates. Such correctional facility may include a separate Leflore County jail which may be located on or adjacent to the correctional facility site. To further the provisions of this subsection:

(a) Any private entity, the State of Mississippi, or Leflore County may enter into any agreement regarding real property or property, including, but not limited to, a lease, a ground lease and leaseback arrangement, a sublease or any other lease agreement or arrangement, as lessor or lessee. Such agreements shall not exceed forty (40) years. The Department of Corrections may enter such agreements or arrangements on behalf of the State of Mississippi;

(b) The powers conferred under this subsection shall be additional and supplemental to the powers conferred by any other law. Where the provisions of this subsection conflict with other law, this subsection shall control; and

(c) The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

SOURCES: Laws, 1992, ch. 537, § 1; Laws, 1994 Ex Sess, ch. 26, § 5; Laws, 1997, ch. 486, § 1; Laws, 2004, ch. 540, § 1; Laws, 2013, ch. 480, § 1, eff from and after passage (approved Apr. 1, 2013.)

Amendment Notes — The 2013 amendment added (7).

CHAPTER 5

Correctional System

Operation, Management and Personnel 47-5-1
Offenders 47-5-110
Alcoholic Beverages, Controlled Substances, Narcotic Drugs, Weapons, and Other Contraband 47-5-191
Mississippi Prison Industries Act of 1990 47-5-531
Prison Overcrowding Emergency Powers Act 47-5-701
State Offenders Serving Sentences in County Jails 47-5-901
Incarceration of State Offenders in County Owned or Leased Correctional Facilities 47-5-931
Intensive Supervision Program; Electronic Home Detention 47-5-1001
State Prison Emergency Construction and Management Board 47-5-1201
Youthful Offenders 47-5-1401

OPERATION, MANAGEMENT AND PERSONNEL

SEC.
47-5-6. Oversight Task Force established; composition; powers and duties.
47-5-10. Department of Corrections; general powers and duties.
47-5-11. Department to collect certain prison, probation and post-release supervision data; report to Oversight Task Force.
47-5-26. Commissioner of Corrections; employment of deputy commissioners, administrative assistant for parole matters, and prison superintendents.
47-5-28. Additional powers and duties of commissioner.
47-5-39. Fiscal impact notes.
47-5-64. Agricultural leases of prison lands to private entities; reservation of additional land for agricultural or nonagricultural projects of Department of Corrections; lease of prison land for power generation or other commercial or industrial projects.
47-5-66. Agricultural leases of prison lands to private entities; procedures; methods of payment of rents; disposal of income; fee per acre in lieu of ad valorem taxes.
47-5-105. Entry of bids, bills, and invoices in minutes before award or payment; copies to be sent.

§ 47-5-1. Policy of state in operation and management of correctional system; independent internal examinations.

Editor's Note — Laws of 2013, ch. 524, § 1 provides:

"SECTION 1. (1) There is hereby created the Corrections and Criminal Justice Task Force to undertake a comprehensive review of the state's corrections system and criminal justice system. The task force shall be comprised of twenty-one (21) members, as follows:

"(a) The Chairpersons of the Corrections Committees of the Senate and the House of Representatives or their designees;

"(b) The Chairpersons of the Judiciary 'B' Committees of the Senate and the House of Representatives or their designees;

"(c) The Lieutenant Governor or a designee;

"(d) The Speaker of the House of Representatives or a designee;

"(e) The Commissioner of Corrections or a designee;

"(f) The Attorney General or a designee;

"(g) A state Supreme Court justice or Court of Appeals judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(h) A state circuit court judge who presides over a certified drug court, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(i) A state justice court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(j) A state county court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(k) A county public defender, appointed by the Governor;

"(*l*) The Director of the Capital Defense Counsel within the Office of the State Public Defender or a designee;

"(m) A member of the Mississippi Sheriffs' Association appointed by its executive director;

"(n) A district attorney or an assistant district attorney, appointed by the Attorney General;

"(o) A member of the Mississippi Association of Supervisors, chosen by the Executive Director of the Mississippi Association of Supervisors;

"(p) A member representing the Southern Poverty Law Center appointed by the Managing Attorney for Mississippi;

"(q) A member of the Mississippi Association for Justice appointed by its executive committee president;

"(r) A member of the Mississippi Association of Chiefs of Police appointed by its executive board president; and

"(s) The President of the Mississippi Prosecutors Association or a designee.

"(2) The appointed members of the task force must be appointed within thirty (30) days of the effective date of this act. The members shall be a part of the task force for the life of the task force. Any vacancy in the task force shall not affect its powers, but shall be filled in the same manner prescribed above. The task force shall hold its first meeting within sixty (60) days of the effective date of this act, on the call of the Commissioner of Corrections. At the first meeting, the task force shall elect from among its membership a permanent chairperson and any other officers, if any, determined to be necessary. A majority of the membership of the task force shall constitute a quorum, and shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the task force. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(3) The task force shall study and make recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi. In making those recommendations, the task force shall:

"(a) Undertake a comprehensive review of all areas of the state's corrections system, including state, local and tribal governments' corrections practices and policies regarding sentencing guidelines;

"(b) Review the total number of offender populations in Mississippi correctional facilities to determine which offenders receive or serve differing sentences for the same crimes, enumerating any discrepancies in sentencing for conviction of the same crimes and documenting the percentage of offenders whose sentence was a result of mandatory minimum sentencing;

"(c) Make findings regarding such review and recommendations for changes in oversight, policies, practices and laws designed to prevent, deter and reduce crime and violence, reduce recidivism, improve cost-effectiveness and ensure the interests of justice at every step of the criminal justice system;

"(d) Identify critical problems in the criminal justice system and assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

"(e) Consult with state, local and tribal government and nongovernmental leaders, including law enforcement officials, legislators, judges, court administrators, prosecutors, defense counsel, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals and corrections officials; and

"(f) Conduct a comprehensive review of the drug court programs, intensive supervision programs and any other alternative incarceration programs utilized in the state and provide detailed recommendations regarding the appropriate funding to support those programs.

"The Mississippi Department of Corrections shall provide appropriate staff support to assist the task force in carrying out its duties. The Commissioner of Corrections shall designate an appropriate employee to act as a point of contact for the provision of staff support to the task force. In addition, the task force may consult with employees of any state agency or department necessary to accomplish the task force's responsibilities under this section.

"(4) The task force shall prepare and submit a final report that contains a detailed statement of findings, conclusions and recommendations of the task force to the Legislature, the Governor and to local and tribal governments by December 31, 2013. It is the intention of the Legislature that, given the importance of the matters before the task force, the task force should work toward unanimously supported findings and recommendations and the task force shall state the vote total for each recommendation contained in its report to the Legislature. The report submitted under this subsection shall be made available to the public.

"The recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi may include proposals for specific statutory changes for improving the effectiveness of the criminal justice system and methods to foster cooperation among state agencies and between the state and local governments. The task force shall be abolished upon submission of the report to the Governor and the Legislature."

§ 47-5-6. Oversight Task Force established; composition; powers and duties.

(1) There is hereby established a committee to be known as the Corrections and Criminal Justice Oversight Task Force, hereinafter called the Oversight Task Force, which must exercise the powers and fulfill the duties described in this chapter.

(2) The Oversight Task Force shall be composed of the following members:

(a) The Lieutenant Governor shall appoint two (2) members;

(b) The Speaker of the House of Representatives shall appoint two (2) members;

(c) The Commissioner of the Department of Corrections, or his designee;

(d) The Chief Justice of the Mississippi Supreme Court shall appoint one (1) member of the circuit court;

(e) The Governor shall appoint one (1) member from the Parole Board;

(f) The Director of the Joint Legislative Committee on Performance Evaluation and Expenditure Review, or his designee;

(g) The Attorney General shall appoint one (1) member representing the victims' community;

(h) The Mississippi Association of Supervisors shall appoint one (1) person to represent the association;

(i) The President of the Mississippi Prosecutors' Association;

(j) The President of the Mississippi Sheriffs' Association, or his designee; and

(k) The Office of the State Public Defender shall appoint one (1) person to represent the public defender's office.

(3) The task force shall meet on or before July 15, 2015, at the call of the Commissioner of the Department of Corrections and organize itself by electing one (1) of its members as chair and such other officers as the task force may consider necessary. Thereafter, the task force shall meet at least biannually and at the call of the chair or by a majority of the members. A quorum consists of seven (7) members.

(4) The task force shall have the following powers and duties:

(a) Track and assess outcomes from the recommendations in the Corrections and Criminal Justice Task Force report of December 2013;

(b) Prepare and submit an annual report no later than the first day of the second full week of each regular session of the Legislature on the outcome and performance measures to the Legislature, Governor and Chief Justice. The report shall include recommendations for improvements, recommendations on transfers of funding based on the success or failure of implementation of the recommendations, and a summary of savings. The report may also present additional recommendations to the Legislature on future legislation and policy options to enhance public safety and control corrections costs;

(c) Monitor compliance with sentencing standards, assess their impact on the correctional resources of the state and determine if the standards advance the adopted sentencing policy goals of the state;

(d) Review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;

(e) Develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length;

(f) Request, review, and receive data and reports on performance outcome measures as related to Chapter 457, Laws of 2014;

(g) To undertake such additional studies or evaluations as the Oversight Task Force considers necessary to provide sentencing reform information and analysis;

(h) Prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required;

(i) The Oversight Task Force shall use clerical and professional employees of the Department of Corrections for its staff;

(j) The Oversight Task Force may employ or retain other professional staff, upon the determination of the necessity for other staff;

(k) The Oversight Task Force may employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations of the Corrections and Criminal Justice Task Force report of December 2013;

(*l*) The Oversight Task Force is encouraged to apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

SOURCES: Laws, 2014, ch. 457, § 68, effective from and after July 1, 2014.

Editor's Note — A former § 47-5-6 [Laws, 1975, ch. 482; Repealed by Laws, 1976, ch. 440, § 92, eff from and after July 1, 1976] related to the establishment of a correctional facility for first offenders.

§ 47-5-10. Department of Corrections; general powers and duties.

The department shall have the following powers and duties:

(a) To accept adult offenders committed to it by the courts of this state for incarceration, care, custody, treatment and rehabilitation;

(b) To provide for the care, custody, study, training, supervision and treatment of adult offenders committed to the department;

(c) To maintain, administer and exercise executive and administrative supervision over all state correctional institutions and facilities used for the custody, training, care, treatment and after-care supervision of adult offenders committed to the department; provided, however, that such supervision shall not extend to any institution or facility for which executive and administrative supervision has been provided by law through another agency;

(d) To plan, develop and coordinate a statewide, comprehensive correctional program designed to train and rehabilitate offenders in order to prevent, control and retard recidivism;

(e) To maintain records of persons committed to it, and to establish programs of research, statistics and planning:

(i) An offender's records shall include a single cover sheet that contains the following information about the offender: name, including any aliases; department inmate number; social security number; photograph; court of conviction; cause number; date of conviction; date of sentence; total number of days in the department's custody or number of days creditable toward time served on each charge; date of actual custody; and date of any revocation of a suspended sentence;

(ii) The department shall maintain an offender's cover sheet in the course of its regularly conducted business activities and shall include an

offender's cover sheet in each request from a court, prosecutor or law enforcement agency for a summary of an offender's records with the department, also known as a "pen-pack." The cover sheet shall conform to Rules 803(6) and 803(8) of the Mississippi Rules of Evidence for admission as an exception to the hearsay rule and may be admissible when properly authenticated according to evidentiary rules and when offered for the purpose of enhanced sentencing under Section 41-29-147, 99-19-81 or 99-19-83 or other similar purposes; and

(iii) This subsection is not intended to conflict with an offender's right of confrontation in criminal proceedings under the state or federal constitution;

(f) To investigate the grievances of any person committed to the department, and to inquire into any alleged misconduct by employees; and for this purpose it may issue subpoenas and compel the attendance of witnesses and the production of writings and papers, and may examine under oath any witnesses who may appear before it;

(g) To administer programs of training and development of personnel of the department;

(h) To develop and implement diversified programs and facilities to promote, enhance, provide and assure the opportunities for the successful custody, training and treatment of adult offenders properly committed to the department or confined in any facility under its control. Such programs and facilities may include, but not be limited to, institutions, group homes, halfway houses, diagnostic centers, work and educational release centers, technical violation centers, restitution centers, counseling and supervision of probation, parole, suspension and compact cases, presentence investigating and other state and local community-based programs and facilities;

(i) To receive, hold and use, as a corporate body, any real, personal and mixed property donated to the department, and any other corporate authority as shall be necessary for the operation of any facility at present or hereafter;

(j) To provide those personnel, facilities, programs and services the department shall find necessary in the operation of a modern correctional system for the custody, care, study and treatment of adult offenders placed under its jurisdiction by the courts and other agencies in accordance with law;

(k) To develop the capacity and administrative network necessary to deliver advisory consultation and technical assistance to units of local government for the purpose of assisting them in developing model local correctional programs for adult offenders;

(*l*) To cooperate with other departments and agencies and with local communities for the development of standards and programs for better correctional services in this state;

(m) To administer all monies and properties of the department;

(n) To report annually to the Legislature and the Governor on the committed persons, institutions and programs of the department;

(o) To cooperate with the courts and with public and private agencies and officials to assist in attaining the purposes of this chapter and Chapter 7 of this title. The department may enter into agreements and contracts with other departments of federal, state or local government and with private agencies concerning the discharge of its responsibilities or theirs. The department shall have the authority to accept and expend or use gifts, grants and subsidies from public and private sources;

(p) To make all rules and regulations and exercise all powers and duties vested by law in the department;

(q) The department may require a search of all persons entering the grounds and facilities at the correctional system;

(r) To submit, in a timely manner, to the Oversight Task Force established in Section 47-5-6 any reports required by law or regulation or requested by the task force.

(s) To discharge any other power or duty imposed or established by law.

SOURCES: Laws, 1976, ch. 440, § 12; reenacted, Laws, 1981, ch. 465, § 7; reenacted, Laws, 1984, ch. 471, § 7; Laws, 1984, ch. 488, § 217; reenacted, Laws, 1986, ch. 413, § 7; Laws, 2012, ch. 305, § 1; Laws, 2014, ch. 457, § 62, eff from and after July 1, 2014.

Editor's Note — Laws of 2013, ch. 524, § 1 provides:

"SECTION 1. (1) There is hereby created the Corrections and Criminal Justice Task Force to undertake a comprehensive review of the state's corrections system and criminal justice system. The task force shall be comprised of twenty-one (21) members, as follows:

"(a) The Chairpersons of the Corrections Committees of the Senate and the House of Representatives or their designees;

"(b) The Chairpersons of the Judiciary 'B' Committees of the Senate and the House of Representatives or their designees;

"(c) The Lieutenant Governor or a designee;

"(d) The Speaker of the House of Representatives or a designee;

"(e) The Commissioner of Corrections or a designee;

"(f) The Attorney General or a designee;

"(g) A state Supreme Court justice or Court of Appeals judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(h) A state circuit court judge who presides over a certified drug court, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(i) A state justice court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(j) A state county court judge, appointed by the Chief Justice of the Supreme Court of Mississippi;

"(k) A county public defender, appointed by the Governor;

"(*l*) The Director of the Capital Defense Counsel within the Office of the State Public Defender or a designee;

"(m) A member of the Mississippi Sheriffs' Association appointed by its executive director;

"(n) A district attorney or an assistant district attorney, appointed by the Attorney General;

"(o) A member of the Mississippi Association of Supervisors, chosen by the Executive Director of the Mississippi Association of Supervisors;

"(p) A member representing the Southern Poverty Law Center appointed by the Managing Attorney for Mississippi;

"(q) A member of the Mississippi Association for Justice appointed by its executive committee president;

"(r) A member of the Mississippi Association of Chiefs of Police appointed by its executive board president; and

"(s) The President of the Mississippi Prosecutors Association or a designee.

"(2) The appointed members of the task force must be appointed within thirty (30) days of the effective date of this act. The members shall be a part of the task force for the life of the task force. Any vacancy in the task force shall not affect its powers, but shall be filled in the same manner prescribed above. The task force shall hold its first meeting within sixty (60) days of the effective date of this act, on the call of the Commissioner of Corrections. At the first meeting, the task force shall elect from among its membership a permanent chairperson and any other officers, if any, determined to be necessary. A majority of the membership of the task force shall constitute a quorum, and shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the task force. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the task force is scheduled.

"(3) The task force shall study and make recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi. In making those recommendations, the task force shall:

"(a) Undertake a comprehensive review of all areas of the state's corrections system, including state, local and tribal governments' corrections practices and policies regarding sentencing guidelines;

"(b) Review the total number of offender populations in Mississippi correctional facilities to determine which offenders receive or serve differing sentences for the same crimes, enumerating any discrepancies in sentencing for conviction of the same crimes and documenting the percentage of offenders whose sentence was a result of mandatory minimum sentencing;

"(c) Make findings regarding such review and recommendations for changes in oversight, policies, practices and laws designed to prevent, deter and reduce crime and violence, reduce recidivism, improve cost-effectiveness and ensure the interests of justice at every step of the criminal justice system;

"(d) Identify critical problems in the criminal justice system and assess the cost-effectiveness of the use of state and local funds in the criminal justice system;

"(e) Consult with state, local and tribal government and nongovernmental leaders, including law enforcement officials, legislators, judges, court administrators, prosecutors, defense counsel, probation and parole officials, criminal justice planners, criminologists, civil rights and liberties organizations, formerly incarcerated individuals and corrections officials; and

"(f) Conduct a comprehensive review of the drug court programs, intensive supervision programs and any other alternative incarceration programs utilized in the state and provide detailed recommendations regarding the appropriate funding to support those programs.

"The Mississippi Department of Corrections shall provide appropriate staff support to assist the task force in carrying out its duties. The Commissioner of Corrections shall designate an appropriate employee to act as a point of contact for the provision of staff support to the task force. In addition, the task force may consult with employees of any state agency or department necessary to accomplish the task force's responsibilities under this section.

"(4) The task force shall prepare and submit a final report that contains a detailed statement of findings, conclusions and recommendations of the task force to the Legislature, the Governor and to local and tribal governments by December 31, 2013. It is the intention of the Legislature that, given the importance of the matters before the task force, the task force should work toward unanimously supported findings and recommendations and the task force shall state the vote total for each recommendation

contained in its report to the Legislature. The report submitted under this subsection shall be made available to the public.

"The recommendations for improving the relationship between the corrections system and the criminal justice system in Mississippi may include proposals for specific statutory changes for improving the effectiveness of the criminal justice system and methods to foster cooperation among state agencies and between the state and local governments. The task force shall be abolished upon submission of the report to the Governor and the Legislature."

Amendment Notes — The 2012 amendment added (e)(i) through (e)(iii).

The 2014 amendment inserted "technical violation centers," in the middle of the last sentence in (h); added (r) and redesignated remaining subsection accordingly; and made minor punctuation changes.

Cross References — Technical violation centers, see § 47-7-38.1.

§ 47-5-11. Department to collect certain prison, probation and post-release supervision data; report to Oversight Task Force.

(1) The Mississippi Department of Corrections shall collect the following information:

(a) Prison data shall include:

(i) The number of offenders entering prison on a new offense;

(ii) The number of offenders entering prison as a revocation of supervision;

(iii) The average sentence length for new prison sentences by offense type;

(iv) The average sentence length for offenders entering prison for a probation revocation;

(v) The average sentence length for offenders entering prison for a parole revocation;

(vi) The average percentage of prison sentence served in prison by offense type;

(vii) The average length of stay by offense type;

(viii) Recidivism rates. For the purposes of this report, "recidivism" means conviction of a new felony offense within three (3) years of release from prison;

1. Recidivism rates by offense type;
2. Recidivism rates by risk level;

(ix) Total prison population;

1. By offense type;
2. By type of admission into prison.

(b) Probation data shall include:

(i) The number of offenders supervised on probation;

(ii) The number of offenders placed on probation;

(iii) The number of probationers revoked for a technical violation and sentenced to a term of imprisonment in a technical violation center;

(iv) The number of probationers revoked for a technical violation and sentenced to a term of imprisonment in another type of department of correction;

(v) The number of probationers who are convicted of a new felony offense and sentenced to a term of imprisonment;

(vi) The number of probationers held on a violation in a county jail awaiting a revocation hearing; and

(vii) The average length of stay in a county jail for probationers awaiting a revocation hearing.

(c) Post-release supervision data shall include:

(i) The number of offenders supervised on post-release supervision;

(ii) The number of offenders placed on post-release supervision;

(iii) The number of post-release probationers revoked for a technical violation and sentenced to a term of imprisonment in a technical violation center;

(iv) The number of post-release probationers revoked for a technical violation and sentenced to a term of imprisonment in another type of department of correction facility;

(v) The number of post-release probationers who are convicted of a new felony offense and sentenced to a term of imprisonment;

(vi) The number of post-release probationers held on a violation in a county jail awaiting a revocation hearing; and

(vii) The average length of stay in a county jail for post-release probationers awaiting a revocation hearing.

(2) The Department of Corrections shall semiannually report information required in subsection (1) of this section to the Oversight Task Force, and upon request, shall report the information to the PEER Committee.

SOURCES: Laws, 2014, ch. 457, § 66, effective from and after July 1, 2014.

Editor's Note — A former § 47-5-11. (Laws, 1964, ch. 378, § 4; Repealed by Laws of 1976, ch. 440, § 92, eff from and after July 1, 1976).

Cross References — Oversight Task Force, see § 47-5-6.

§ 47-5-26. Commissioner of Corrections; employment of deputy commissioners, administrative assistant for parole matters, and prison superintendents.

(1) The commissioner shall employ the following personnel:

(a) A Deputy Commissioner for Administration and Finance, who shall supervise and implement all fiscal policies and programs within the department, supervise and implement all hiring and personnel matters within the department, supervise the department's personnel director, supervise and implement all purchasing within the department and supervise and implement all data processing activities within the department, and who shall serve as the Chief Executive Officer of the Division of Administration and Finance. He shall possess either:

(i) A master's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and four (4) years of experience in work related to the

above-described duties, one (1) year of which must have included line or functional supervision; or

(ii) A bachelor's degree from an accredited four-year college or university in public or business administration, accounting, economics or a directly related field, and six (6) years of experience in work related to the above-described duties, one (1) year of which must have included line or functional supervision. Certification by the State of Mississippi as a certified public accountant may be substituted for one (1) year of the required experience.

(b) A Deputy Commissioner for Community Corrections, who shall initiate and administer programs, including, but not limited to, supervision of probationers, parolees and suspensioners, counseling, community-based treatment, interstate compact administration and enforcement, prevention programs, halfway houses and group homes, technical violation centers, restitution centers, presentence investigations, and work and educational releases, and shall serve as the Chief Executive Officer of the Division of Community Services. The Deputy Commissioner for Community Corrections is charged with full and complete cooperation with the State Parole Board and shall make monthly reports to the Chairman of the Parole Board in the form and type required by the chairman, in his discretion, for the proper performance of the probation and parole functions. After a plea or verdict of guilty to a felony is entered against a person and before he is sentenced, the Deputy Commissioner for Community Corrections shall procure from any available source and shall file in the presentence records any information regarding any criminal history of the person such as fingerprints, dates of arrests, complaints, civil and criminal charges, investigative reports of arresting and prosecuting agencies, reports of the National Crime Information Center, the nature and character of each offense, noting all particular circumstances thereof and any similar data about the person. The Deputy Commissioner for Community Corrections shall keep an accurate and complete duplicate record of this file and shall furnish the duplicate to the department. This file shall be placed in and shall constitute a part of the inmate's master file. The Deputy Commissioner for Community Corrections shall furnish this file to the State Parole Board when the file is needed in the course of its official duties. He shall possess either: (i) a master's degree in counseling, corrections psychology, guidance, social work, criminal justice or some related field and at least four (4) years' full-time experience in such field, including at least one (1) year of supervisory experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, one (1) year of which shall have been at the supervisory level.

(c) A Deputy Commissioner for Institutions, who shall administer institutions, reception and diagnostic centers, prerelease centers and other facilities and programs provided therein, and shall serve as the Chief Executive Officer of the Division of Institutions. He shall possess either: (i) a master's degree in counseling, criminal justice, psychology, guidance,

social work, business or some related field, and at least four (4) years' full-time experience in corrections, including at least one (1) year of correctional management experience; or (ii) a bachelor's degree in a field described in subparagraph (i) of this paragraph and at least six (6) years' full-time work in corrections, four (4) years of which shall have been at the correctional management level.

(2) The commissioner shall employ an administrative assistant for parole matters, who shall be an employee of the department assigned to the State Parole Board and who shall work under the guidance and supervision of the board.

(3) The administrative assistant for parole matters shall receive an annual salary to be established by the Legislature. The salaries of department employees not established by the Legislature shall receive an annual salary established by the State Personnel Board.

(4) The commissioner shall employ a superintendent for the Parchman facility, Central Mississippi Correctional Facility and South Mississippi Correctional Institution of the Department of Corrections. The Superintendent of the Mississippi State Penitentiary shall reside on the grounds of the Parchman facility. Each superintendent shall appoint an officer in charge when he is absent.

Each superintendent shall develop and implement a plan for the prevention and control of an inmate riot and shall file a report with the Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee on the first day of each regular session of the Legislature regarding the status of the plan.

In order that the grievances and complaints of inmates, employees and visitors at each facility may be heard in a timely and orderly manner, each superintendent shall appoint or designate an employee at the facility to hear grievances and complaints and to report grievances and complaints to the superintendent. Each superintendent shall institute procedures as are necessary to provide confidentiality to those who file grievances and complaints.

SOURCES: Laws, 1976, ch. 440, § 14; Laws, 1978, ch. 520, § 12; reenacted, Laws, 1981, ch. 465, § 17; reenacted and amended, Laws, 1984, ch. 471, § 17; reenacted and amended, Laws, 1986, ch. 413, § 17; Laws, 1988, ch. 504, § 8; Laws, 1989, 1st Ex Sess, ch. 3, § 9; Laws, 1992, ch. 368 § 1; Laws, 1993, ch. 577, § 1; Laws, 1995, ch 419, § 1; Laws, 2002, ch. 624, § 1; Laws, 2014, ch. 457, § 63, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "technical violation centers," in the first sentence of (1)(b).

Cross References — Technical violation centers, see § 47-7-38.1.

§ 47-5-28. Additional powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) To implement and administer laws and policy relating to corrections and coordinate the efforts of the department with those of the federal

government and other state departments and agencies, county governments, municipal governments, and private agencies concerned with providing offender services;

(b) To establish standards, in cooperation with other state agencies having responsibility as provided by law, provide technical assistance, and exercise the requisite supervision as it relates to correctional programs over all state-supported adult correctional facilities and community-based programs;

(c) To promulgate and publish such rules, regulations and policies of the department as are needed for the efficient government and maintenance of all facilities and programs in accord insofar as possible with currently accepted standards of adult offender care and treatment;

(d) To provide the Parole Board with suitable and sufficient office space and support resources and staff necessary to conducting Parole Board business under the guidance of the Chairman of the Parole Board;

(e) To contract for transitional reentry center beds that will be used as noncorrections housing for offenders released from the department on parole, probation or post-release supervision but do not have appropriate housing available upon release. At least one hundred (100) transitional reentry center beds contracted by the department and chosen by the Parole Board shall be available for the parole board to place parolees without appropriate housing;

(f) To make an annual report to the Governor and the Legislature reflecting the activities of the department and make recommendations for improvement of the services to be performed by the department;

(g) To cooperate fully with periodic independent internal investigations of the department and to file the report with the Governor and the Legislature;

(h) To perform such other duties necessary to effectively and efficiently carry out the purposes of the department as may be directed by the Governor.

SOURCES: Laws, 1976, ch. 440, § 15; reenacted, Laws, 1981, ch. 465, § 18; reenacted, Laws, 1984, ch. 471, § 18; reenacted, Laws, 1986, ch. 413, § 18; Laws, 1988, ch. 504, § 9; Laws, 1989, 1st Ex Sess, ch. 3, § 10; Laws, 1995, ch. 416, § 2; Laws, 2014, ch. 457, § 49, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (e) and redesignated the remaining subsections accordingly; and made minor punctuation changes in (c) and (h).

§ 47-5-39. Fiscal impact notes.

(1) As used in this section, "fiscal note" means the estimated dollar cost to the state for the first year and the annual cost thereafter. The term "ten-year fiscal note" means the estimated dollar cost to the state over the ten-year period following passage or adoption of the subject of the fiscal note.

(2) Whenever legislation is introduced in the Legislature, which would establish a new criminal offense or would amend the sentencing provisions of

an existing criminal offense, the Department of Corrections shall provide a fiscal note and a ten-year fiscal note on the proposed legislation upon the request of any member of the Legislature. The fiscal note shall be published in electronic form on the Mississippi Legislature website as provided in Section 5-1-85.

(3) State agencies and political subdivisions shall cooperate with the department in preparing fiscal notes and the ten-year fiscal notes. Such agencies and political subdivisions shall submit requested information to the department in a timely fashion.

(4) In preparing fiscal notes and the ten-year fiscal notes, the department must accurately report to the Legislature information provided to the department by state agencies and political subdivisions.

(5) The department may request information from nongovernmental agencies and organizations to assist in preparing the fiscal note and the ten-year fiscal note.

SOURCES: Laws, 2014, ch. 457, § 64, effective from and after July 1, 2014.

Editor's Note — A former § 47-5-39 [Laws, 1964, ch. 378, § 41; Laws, 1966, ch. 380, § 1; Laws, 1971, ch. 524, § 9; Laws, 1973, ch. 320, § 1; Laws, 1974, ch. 539, § 9; Laws, 1975, ch. 425; Repealed by Laws, of 1976, ch. 440, § 92, eff from and after July 1, 1976] provided for the employment of a prison physician, a dentist, a psychiatrist and nurses, their compensation and residences, and provided that prison employees and dependents are entitled to free medical and dental care.

§ 47-5-64. Agricultural leases of prison lands to private entities; reservation of additional land for agricultural or nonagricultural projects of Department of Corrections; lease of prison land for power generation or other commercial or industrial projects.

(1) The commissioner is hereby directed to determine the number of acres and location of land under the department's jurisdiction that are needed for security purposes, for Prison Agricultural Enterprises and for nonagricultural purposes. The commissioner shall designate and reserve such additional land for agricultural or nonagricultural enterprise projects of the department, as he deems necessary. The commissioner shall then recommend to the Department of Finance and Administration the number of acres of department land that should be leased to private entities and the term of the leases.

(2) The Department of Finance and Administration is authorized to lease for agricultural purposes that Penitentiary land so recommended for not less than three (3) nor more than eight (8) years, with the approval of the Public Procurement Review Board.

(3) The Department of Finance and Administration, with the approval of the Governor, the Secretary of State and the Commissioner of the Department of Corrections, is authorized to lease Penitentiary land for power generation projects or other commercial or industrial projects at the same time that it leases the land as prescribed in subsection (2) of this section. The Department

of Finance and Administration is authorized to negotiate all aspects of leases or related agreements executed under this subsection consistent with the following:

(a) The period of the lease term combined with the term of renewal shall not exceed forty (40) years.

(b) Any lease or renewal lease shall:

(i) Provide for periodic rent adjustments throughout the term of the lease; and

(ii) Require the lessee to provide a decommissioning and restoration bond or other security securing the lessee's obligation to remove all aboveground and underground facilities to a depth of at least three (3) feet underground and to restore the surface to a condition similar to its condition before the commencement of the lease.

(c) Any lease or renewal lease may provide for any combination of the following: base rent, bonuses, percentage of income payments, royalty payments or other terms and conditions that the Department of Finance and Administration deems necessary to maintain a fair and equitable return to the state and to protect the leased land throughout the term of the lease or renewal lease.

(d) Oil, gas and mineral rights in the leased land shall be reserved to the State of Mississippi.

(e) This subsection does not authorize the sale or transfer of title to any state lands.

(f) The Department of Finance and Administration may charge fees and expenses, not to exceed costs, incurred in administering this subsection.

(g) Any monies derived from leasing lands under this subsection shall be deposited to the Prison Agricultural Enterprise Fund as provided in Section 47-5-66.

SOURCES: Laws, 1978, ch. 301, § 1; brought forward, Laws, 1981, ch. 465, § 36; reenacted, Laws, 1984, ch. 471, § 32; Laws, 1984, ch. 488, § 221; reenacted, Laws, 1986, ch. 413, § 32; Laws, 1986, ch. 425, § 1; Laws, 1988, ch. 504, § 16; Laws, 1992, ch. 506, § 12; Laws, 2007, ch. 351, § 1; Laws, 2012, ch. 538, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment designated the first three sentences of the former section as (1), and therein, added "and for nonagricultural" in the first sentence, inserted "or nonagricultural" in the second sentence, and made minor stylistic changes; designated the last sentence of the former section as (2), and therein, substituted "is authorized" for "shall have the authority"; and added (3).

§ 47-5-66. Agricultural leases of prison lands to private entities; procedures; methods of payment of rents; disposal of income; fee per acre in lieu of ad valorem taxes.

(1) Except as provided in Section 47-5-64(3), it shall be the duty of the Department of Finance and Administration, with the approval of the Public Procurement Review Board, to lease lands at public contract upon the

submission of two (2) or more sealed bids to the Department of Finance and Administration after having advertised the land for rent in newspapers of general circulation published in Jackson, Mississippi; Memphis, Tennessee; the county in which the land is located; and contiguous counties for a period of not less than two (2) successive weeks. The first publication shall be made not less than ten (10) days before the date of the public contract, and the last publication shall be made not more than seven (7) days before that date. The Department of Finance and Administration may reject any and all bids. If all bids on a tract or parcel of land are rejected, the Department of Finance and Administration may then advertise for new bids on that tract or parcel of land. Successful bidders shall take possession of their leaseholds at the time authorized by the Department of Finance and Administration. However, rent shall be due no later than the day upon which the lessee shall assume possession of the leasehold, and shall be due on the anniversary date for each following year of the lease. The Department of Finance and Administration may provide in any lease that rent shall be paid in full in advance or paid in installments, as may be necessary or appropriate. In addition, the Department of Finance and Administration may accept, and the lease may provide for, assignments of federal, state or other agricultural support payments, growing crops or the proceeds from the sale thereof, promissory notes, or any other good and valuable consideration offered by any lessee to meet the rent requirements of the lease. If a promissory note is offered by a lessee, it shall be secured by a first lien on the crop of the lessee, or the proceeds from the sale thereof. The lien shall be filed pursuant to Article 9 of the Uniform Commercial Code and Section 1324 of the Food Security Act of 1985, as enacted or amended. If the note is not paid at maturity, it shall bear interest at the rate provided for judgments and decrees in Section 75-17-7 from its maturity date until the note is paid. The note shall provide for the payment of all costs of collection and reasonable attorney's fees if default is made in the payment of the note. The payment of rent by promissory note or any means other than cash in advance shall be subject to the approval of the Public Procurement Review Board, which shall place the approval of record in the minutes of the board.

(2) There is created a special fund to be designated as the "Prison Agricultural Enterprises Fund" and to be used for the purpose of conducting, operating and managing the agricultural and nonagricultural enterprises of the department. Any monies derived from the leasing of Penitentiary lands, from the sales of timber as provided in Section 47-5-56, from the prison's agricultural enterprises or earmarked for the Prison Industries Fund shall be deposited to the special fund. However, fifteen percent (15%) of the monies derived from the leasing of Penitentiary lands under Section 47-5-64(3) shall be deposited to a special fund to be distributed annually on a student pro rata basis to the public schools located in Sunflower County by the Department of Finance and Administration.

(3) All profits derived from prison industries shall be placed in a special fund in the State Treasury to be known as the "Prison Industries Fund," to be appropriated each year by the Legislature to the nonprofit corporation, which

is required to be organized under the provisions of Section 47-5-535, for the purpose of operating and managing the prison industries.

(4) The state shall have the rights and remedies for the security and collection of the rents given by law to landlords.

(5) Lands leased for agricultural purposes under Section 47-5-64(2) shall be subject to a fee-in-lieu of ad valorem taxes, including taxes levied for school purposes. The fee-in-lieu shall be Nine Dollars ($9.00) per acre. Upon the execution of the agricultural leases to private entities as authorized by Section 47-5-64(2), the Department of Finance and Administration shall collect the in lieu fee and shall forward the fees to the tax collector in which the land is located. The tax collector shall disburse the fees to the appropriate county or municipal governing authority on a pro rata basis. The sum apportioned to a school district shall not be less than the school district's pro rata share based upon the proportion that the millage imposed for the school district by the appropriate levying authority bears to the millage imposed by the levying authority for all other county or municipal purposes. Any funds obtained by the corporation as a result of sale of goods and services manufactured and provided by it shall be accounted for separate and apart from any funds received by the corporation through appropriation from the State Legislature. All nonappropriated funds generated by the corporation shall not be subject to appropriation by the State Legislature.

(6) Any land leased, as provided under Section 47-5-64(2), shall not be leased for an amount less than would be received if such land were to be leased under any federal loan program. In addition, all leases shall be subject to the final approval of the Public Procurement Review Board before such leases are to become effective.

SOURCES: Laws, 1978, ch. 301, § 2; brought forward, Laws, 1981, ch. 465, § 37; reenacted, Laws, 1984, ch. 471, § 33; Laws, 1984, ch. 488, § 222; reenacted, Laws, 1986, ch. 413, § 33; Laws, 1987, ch. 463; Laws, 1988, ch. 504, § 17; Laws, 1989, ch. 308, § 1; Laws, 1990, ch. 534, § 24; Laws, 1992, ch. 506, § 13; Laws, 1994, ch. 369, § 1; Laws, 1996, ch. 388, § 1; reenacted and amended, Laws, 1997, ch. 367, § 1; reenacted and amended, Laws, 1998, ch. 420, § 1; Laws, 1999, ch. 536, § 1; Laws, 2000, ch. 362, § 2; Laws, 2001, ch. 363, § 1; Laws, 2002, ch. 334, § 1; Laws, 2004, ch. 483, § 1; reenacted and amended, Laws, 2006, ch. 396, § 1; Laws, 2007, ch. 576, § 1; Laws, 2008, ch. 321, § 1; Laws, 2009, ch. 420, § 1; Laws, 2012, ch. 538, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment subdivided the first paragraph of (1) into (1) through (5); added the exception at the beginning of (1); rewrote present (2), which read: "There is created a special fund to be designated as the 'Prison Agricultural Enterprises Fund.' Any monies in hand or due from the leasing of Penitentiary lands and the sales of timber as provided in Section 47-5-56 and earmarked for the Prison Industries Fund shall be deposited to the special fund for prison agricultural enterprises. All monies in each fiscal year derived from the leasing of the Penitentiary lands and the sales of timber as provided in Section 47-5-56 shall be deposited into the special fund for the purpose of conducting, operating and managing the prison agricultural enterprises of the department"; updated the section references in present (5); designated the former second paragraph of the section as (6), and therein, substituted

"provided under Section 47-5-64(2)" for "provided in this section"; and deleted the former last paragraph of the section, which read: "This section shall be repealed from and after July 1, 2014."

§ 47-5-105. Entry of bids, bills, and invoices in minutes before award or payment; copies to be sent.

The award of all contracts in excess of Five Hundred Thousand Dollars ($500,000.00) entered into by the commissioner shall be approved by the Public Procurement Review Board and shall be entered on the minutes of such board before any funds shall be expended therefor. Provided further, that the entrance of the award of contracts on the minutes of the Public Procurement Review Board shall contain a detailed accounting of all bids entered showing clearly the lowest bid and best bid that was awarded in each and every case and, if the bid accepted is not the lowest, then the reasons and justification for not accepting the lowest bid shall be spread on the minutes. A true copy of the minutes of each meeting of such Public Procurement Review Board shall be sent monthly to the Governor, members of the Legislative Budget Office and Chairmen of the Corrections Committees of the Senate and the House of Representatives.

SOURCES: Laws, 1974, ch. 539, § 27; Laws, 1976, ch. 440, § 52; reenacted, Laws, 1981, ch. 465, § 55; reenacted, Laws, 1984, ch. 471, § 50; Laws, 1984, ch. 488, § 224; reenacted, Laws, 1986, ch. 413, § 50; Laws, 1988, ch. 504, § 21; Laws, 2012, ch. 388, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "Five Hundred Thousand Dollars ($500,000.00)" for "One Hundred Thousand Dollars ($100,000.00)" in the first sentence, and in the last sentence substituted "Committees of the Senate and the House of Representatives" for "Committee of the Senate and Penitentiary Committee of the House of Representatives."

OFFENDERS

SEC.

47-5-110. Commitments to be to department and not to particular institutions or facilities; transfers of offenders; community prerelease program; conditions; immunity for commissioner of corrections; regimented inmate discipline programs.

47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.

47-5-138.1. Trusties authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance.

47-5-157. Written discharge or release, clothing, Mississippi driver's license or state identification card, money and bus ticket furnished to discharged or released offender.

47-5-173. Granting of leave for personal reasons.

47-5-177. Notice requirements prior to release of offenders.

47-5-180. Appointment of commissioner to make health-care decisions for offender who lacks capacity and does not have relative available; procedure; applicability of Uniform Health-Care Decisions Act.

§ 47-5-110. Commitments to be to department and not to particular institutions or facilities; transfers of offenders; community prerelease program; conditions; immunity for commissioner of corrections; regimented inmate discipline programs.

(1) Commitment to any institution or facility within the jurisdiction of the department shall be to the department, not to a particular institution or facility. The commissioner shall assign a newly committed offender to an appropriate facility consistent with public safety; provided, however, that any offender who, in the opinion of the sentencing judge, requires confinement in a maximum security unit shall be assigned, upon initial commitment, to the Parchman facility. The commissioner may extend the place of confinement of eligible offenders as provided under subsection (2) of this section. He may transfer an offender from one (1) institution to another, consistent with the commitment and in accordance with treatment, training and security needs. The commissioner shall have the authority to transfer inmates from the various correctional facilities of the department to restitution centers if such inmates meet the qualifications prescribed in Section 99-37-19. The commissioner shall prepare appropriate standards of eligibility for such transfers of offenders from one (1) institution to another institution and transfers of offenders who meet the qualifications for placement in restitution centers. The commissioner shall have the authority to remove the offenders from restitution centers and to transfer them to other facilities of the department. The commissioner shall obtain the approval of the sentencing court before transferring an offender committed to the department to a restitution center. On the request of the chief executive officer of the affected unit of local government, the commissioner may transfer a person detained in a local facility to a state facility. The commissioner shall determine the cost of care for that person to be borne by the unit of local government. The commissioner may assign to a community work center, any offender who is convicted under the Mississippi Implied Consent Law and who is sentenced to the custody of the Department of Corrections, except that if a death or a serious maiming has occurred during the commission of the violation of the Mississippi Implied Consent Law, then the offender so convicted may not be assigned to a community work center.

(2) The department may establish by rule or policy and procedure a community prerelease program which shall be subject to the following requirements:

(a) The commissioner may extend the limits of confinement of offenders serving sentences for violent or nonviolent crimes who have six (6) months or less remaining before release on parole, conditional release or discharge to participate in the program. Parole violators may be allowed to participate in the program.

(b) Any offender who is referred to the program shall remain an offender of the department and shall be subject to rules and regulations of the department pertaining to offenders of the department until discharged or released on parole or conditional release by the State Parole Board.

(c) The department shall require the offender to participate in work or educational or vocational programs and other activities that may be necessary for the supervision and treatment of the offender.

(d) An offender assigned to the program shall be authorized to leave a community prerelease center only for the purpose and time necessary to participate in the program and activities authorized in paragraph (c) of this subsection.

(3) The commissioner shall have absolute immunity from liability for any injury resulting from a determination by the commissioner that an offender shall be allowed to participate in the community prerelease program.

(4)(a) The department may by rule or policy and procedure provide the regimented inmate discipline program and prerelease service for offenders at each of its major correctional facilities: Mississippi State Penitentiary, Central Mississippi Correctional Institution and South Mississippi Correctional Institution.

(b) The commissioner may establish regimented inmate discipline and prerelease programs at the South Mississippi Correctional Institution. Offenders assigned to this facility may receive the services provided by the regimented inmate discipline program. The prerelease program may be located on the grounds of this facility or another facility designated by the commissioner.

SOURCES: Laws, 1976, ch. 440, § 16; reenacted, Laws, 1981, ch. 465, § 57; reenacted, Laws, 1984, ch. 471, § 53; reenacted, Laws, 1986, ch. 413, § 53; Laws, 1986, ch. 428, § 1; Laws, 1993, ch. 578, § 1; Laws, 1997, ch. 371, § 1; Laws, 2003, ch. 552, § 2; Laws, 2005, ch. 505, § 1; Laws, 2007, ch. 353, § 1; Laws, 2012, ch. 391, § 1, eff from and after passage (approved Apr. 18, 2012.)

Amendment Notes — The 2012 amendment deleted former (5), which read: "This section shall stand repealed on July 1, 2011."

§ 47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.

(1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (½) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence. This subsection does not apply to any sentence imposed after June 30, 1995.

(2) An inmate may forfeit all or part of his earned time allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be

effective except upon approval of the commissioner, or his designee, and forfeited earned time may not be restored.

(3)(a) For the purposes of this subsection, "final order" means an order of a state or federal court that dismisses a lawsuit brought by an inmate while the inmate was in the custody of the Department of Corrections as frivolous, malicious or for failure to state a claim upon which relief could be granted.

(b) On receipt of a final order, the department shall forfeit:

(i) Sixty (60) days of an inmate's accrued earned time if the department has received one (1) final order as defined herein;

(ii) One hundred twenty (120) days of an inmate's accrued earned time if the department has received two (2) final orders as defined herein;

(iii) One hundred eighty (180) days of an inmate's accrued earned time if the department has received three (3) or more final orders as defined herein.

(c) The department may not restore earned time forfeited under this subsection.

(4) An inmate who meets the good conduct and performance requirements of the earned time allowance program may be released on his conditional earned time release date.

(5) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4-½) days for each thirty (30) days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed fifteen percent (15%) of an inmate's term of sentence; however, beginning July 1, 2006, no person under the age of twenty-one (21) who has committed a nonviolent offense, and who is under the jurisdiction of the Department of Corrections, shall be subject to the fifteen percent (15%) limitation for earned time allowances as described in this subsection (5).

(6) Any inmate, who is released before the expiration of his term of sentence under this section, shall be placed under earned-release supervision until the expiration of the term of sentence. The inmate shall retain inmate status and remain under the jurisdiction of the department. The period of earned-release supervision shall be conducted in the same manner as a period of supervised parole. The department shall develop rules, terms and conditions for the earned-release supervision program. The commissioner shall designate the appropriate hearing officer within the department to conduct revocation hearings for inmates violating the conditions of earned-release supervision.

(7) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence, but the time the inmate served on earned-release supervision before revocation, shall be applied to reduce his sentence.

SOURCES: Laws, 1977, ch. 479, § 6; brought forward, Laws, 1981, ch. 465, § 73; reenacted and amended, Laws, 1984, ch. 386; reenacted, Laws, 1984, ch. 471, § 65; Laws, 1985, ch. 531, § 2; reenacted, Laws, 1986, ch. 413, § 65; Laws, 1992, ch. 520, § 1; Laws, 1993, ch. 403, § 1; Laws, 1995, ch. 596, § 4; Laws, 1996, ch. 350, § 1; Laws, 1996, ch. 418, § 1; Laws, 1998, ch. 402, § 1;

Laws, 2001, ch. 393, § 5; Laws, 2005, ch. 471, § 9; Laws, 2012, ch. 486, § 1; brought forward and amended, Laws, 2014, ch. 457, § 72, eff from and after July 1, 2014.

Amendment Notes — The 2012 amendment substituted "served on earned-release supervision before revocation, shall be applied to reduce his sentence" for "was on earned-release supervision, shall not be applied to and shall not reduce his sentence" at the end of (7).

The 2014 amendment brought the section forward and amended it with a minor stylistic change in (2).

JUDICIAL DECISIONS

1. In general.
5. Revocation.

1. In general.

As the allegations in an inmate's motion for postconviction relief were contradicted by his prior sworn statements, and his claims had no arguable basis in law or in fact and had no realistic chance for success, the postconviction court did not abuse its discretion in finding the motion frivolous and ordering the forfeiture of 60 days of his earned time under Miss. Code Ann. § 47-5-138. Bell v. State, 102 So. 3d 297 (Miss. Ct. App. 2012), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 446 (Miss. 2013).

Circuit court did not abuse its discretion in deeming appellant's second post-conviction (PCR) motion frivolous and ordering the forfeiture of sixty days of his earned-time credit under Miss. Code Ann. § 47-5-138(3)(b)(i) because appellant entered a voluntary guilty plea, which waived his right to challenge the search warrant; the PCR motion offered nothing more than conclusory allegations framed as newly discovered evidence, and it had no realistic chance of success, was not premised upon an arguably sound basis in fact and law, and set forth no facts that would warrant relief. Russell v. State, 73 So. 3d 542 (Miss. Ct. App. 2011).

5. Revocation.

Although an inmate was a candidate for sanctions under Miss. Code Ann. § 47-5-138(3)(a) and (b) for filing successive, frivolous motions for post-conviction relief, such sanctions would have no effect because he had been sentenced as a habitual offender under Miss. Code Ann. § 99-19-81, and thus had no earned time to forfeit. Clay v. State, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013), writ of certiorari dismissed by 2013 Miss. LEXIS 651 (Miss. Dec. 12, 2013).

Denial of defendant's motion for post-conviction relief, in which defendant challenged the revocation of his earned-release supervision (ERS), pursuant to Miss. Code Ann. § 47-5-138(2), was clearly erroneous because defendant was never indicted for the conduct upon which the revocation was based, and at the revocation hearing, the State did not present evidence to prove defendant had violated an ERS rule and did not dispute any evidence that defendant had acted in self-defense. Morris v. State, 66 So. 3d 716 (Miss. Ct. App. June 28, 2011).

RESEARCH REFERENCES

ALR. Defendant's Right to Credit for Time Spent in Halfway House, Rehabilitation Center, or Similar Restrictive Environment as Condition of Pretrial Release. 46 A.L.R.6th 63.

§ 47-5-138.1. Trusties authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance.

(1) In addition to any other administrative reduction of sentence, an offender in trusty status as defined by the classification board of the Department of Corrections may be awarded a trusty-time allowance of thirty (30) days' reduction of sentence for each thirty (30) days of participation during any calendar month in an approved program while in trusty status, including satisfactory participation in education or instructional programs, satisfactory participation in work projects and satisfactory participation in any special incentive program.

(2) An offender in trusty status shall not be eligible for a reduction of sentence under this section if:

(a) The offender was sentenced to life imprisonment;

(b) The offender was convicted as an habitual offender under Sections 99-19-81 through 99-19-87;

(c) The offender was convicted of a sex crime;

(d) The offender has not served the mandatory time required for parole eligibility, as prescribed under Section 47-7-3, for a conviction of robbery or attempted robbery through the display of a deadly weapon, carjacking through the display of a deadly weapon or a drive-by shooting; or

(e) The offender was convicted of trafficking in controlled substances under Section 41-29-139.

SOURCES: Laws, 1999, ch. 515, § 1; Laws, 2001, ch. 393, § 6; Laws, 2001, ch. 478, § 1; Laws, 2004, ch. 456, § 1; Laws, 2010, ch. 470, § 2; Laws, 2014, ch. 457, § 41, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted former (2)(e) which read: "The offender was convicted of possession with the intent to deliver or sell a controlled substance under Section 41-29-139; or"; and redesigned the remaining subsection accordingly; and made minor stylistic changes throughout.

§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

JUDICIAL DECISIONS

2. Constitutional issues.
3.5. Eligibility for release.
4.5. Conditional release.

2. Constitutional issues.

Where a juvenile convicted of murder receives a life sentence, conditional release does not satisfy the mandate of Miller v. Alabama, 2012 U.S. LEXIS 4873, because conditional release is more akin to clemency, which is different from parole despite some surface similarities, and conditional release would not be determined by the sentencing authority at the time of sentencing based on age and other characteristics, as Miller mandates. Parker v. State, 119 So. 3d 987 (Miss. 2013).

3.5. Eligibility for release.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition, the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

4.5. Conditional release.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of an other capital offense under Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

Defendant's guilty plea to murder under Miss. Code Ann. § 97-3-19(1)(a) was knowing, voluntary, and intelligent as defense counsel correctly advised the inmate that when he reached the 65, he could petition to be released from custody under Miss. Code Ann. § 47-5-139(1)(a); while counsel might have used the term "parole eligibility" rather than the correct term "conditional release," he correctly advised the inmate that he would be eligible for release at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

§ 47-5-142. Meritorious earned time.

SOURCES: Laws, 1985, ch. 531, § 1; Laws, 1992, ch. 520, § 4; Laws, 2009, ch. 316, § 1; brought forward without change, Laws, 2014, ch. 457, § 73, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 457, § 73, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 47-5-157. Written discharge or release, clothing, Mississippi driver's license or state identification card, money and bus ticket furnished to discharged or released offender.

When an offender is entitled to a discharge from the custody of the department, or is released therefrom on parole, pardon, or otherwise, the commissioner or his designee shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal

annexed, giving the offender's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the offender as may be practicable and the discharge plan developed as required by law. At least fifteen (15) days prior to the release of an offender as described herein, the director of records of the department shall give the written notice which is required pursuant to Section 47-5-177. The offender shall be furnished, if needed, suitable civilian clothes, a Mississippi driver's license, or a state identification card that is not a department-issued identification card and all money held to his credit by any official of the correctional system shall be delivered to him.

The amount of money which an offender is entitled to receive from the State of Mississippi when he is discharged from the state correctional system shall be determined as follows:

(a) If he has continuously served his sentence in one (1) year or less flat time, he shall be given Fifteen Dollars ($15.00).

(b) If he has served his sentence in more than one (1) year flat time and in less than ten (10) years flat time, he shall be given Twenty-five Dollars ($25.00).

(c) If he has continuously served his sentence in ten (10) or more years flat time, he shall be given Seventy-five Dollars ($75.00).

(d) If he has continuously served his sentence in twenty (20) or more years flat time, he shall be given One Hundred Dollars ($100.00).

There shall be given in addition to the above specified monies in subsections (a), (b), (c) and (d), a bus ticket to the county of conviction or to a state line of Mississippi.

SOURCES: Codes, 1942, § 7949; Laws, 1964, ch. 378, § 29; Laws, 1976, ch. 440, § 73; reenacted, Laws, 1981, ch. 465, § 81; reenacted, Laws, 1984, ch. 471, § 72; Laws, 1985, ch. 444, § 3; reenacted, Laws, 1986, ch. 413, § 72; Laws, 2014, ch. 457, § 46, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in the first undesignated paragraph, added "and the discharge plan developed as required by law" to the end of the first sentence; substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the second sentence; and in the last sentence, at the beginning, substituted "The offender" for "He", and inserted "a Mississippi driver's license, or a state identification card that is not a department-issued identification card and."

§ 47-5-173. Granting of leave for personal reasons.

The commissioner, or his designees, may grant leave to an offender and may take into consideration sickness or death in the offender's family or the seeking of employment by the offender in connection with application for parole, for a period of time not to exceed ten (10) days. At least fifteen (15) days prior to the release of an offender on leave, the director of records of the department shall give the written notice required pursuant to Section 47-5-

177. However, if an offender is granted leave because of sickness or death in the offender's family, written notice shall not be required but the inmate shall be accompanied by a correctional officer or a law enforcement officer. In all other cases the commissioner, or his designees, shall provide required security when deemed necessary. The commissioner, or his designees, in granting leave, shall take into consideration the conduct and work performance of the offender.

SOURCES: Laws, 1977, ch. 479, § 7; Laws, 1978, ch. 338, § 1 brought forward, Laws, 1981, ch. 465, § 89; Laws, 1982, ch. 431, § 4; reenacted, Laws, 1984, ch. 471, § 73; Laws, 1985, ch. 444, § 4; reenacted, Laws, 1986, ch. 413, § 73; Laws, 1996, ch. 373, § 1; Laws, 2014, ch. 457, § 50, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the second sentence.

§ 47-5-177. Notice requirements prior to release of offenders.

At least fifteen (15) days prior to the release of an offender from the custody of the department because of discharge, parole, pardon, temporary personal leave or pass, or otherwise, except for sickness or death in the offender's family, the director of records of the department shall give written or electronic notice of such release to the sheriff of the county and to the chief of police of the municipality where the offender was convicted. If the offender is paroled to a county other than the county of conviction, the director of records shall give written or electronic notice of the release to the sheriff, district attorney and circuit judge of the county and to the chief of police of the municipality where the offender is paroled and to the sheriff of the county and to the chief of police of the municipality where the offender was convicted. The department shall notify the parole officer of the county where the offender is paroled or discharged to probation of any chronic mental disorder incurred by the offender, of any type of infectious disease for which the offender has been examined and treated, and of any medications provided to the offender for such conditions.

The commissioner shall require the director of records to clearly identify the notice of release of an offender who has been convicted of arson at any time. The fact that the offender to be released had been convicted of arson at any time shall appear prominently on the notice of release and the sheriff shall notify all officials who are responsible for investigation of arson within the county of such offender's release and the chief of police shall notify all such officials within the municipality of such offender's release.

SOURCES: Laws, 1985, ch. 444, § 1; Laws, 1987, ch. 388; Laws, 1990, ch. 399, § 1; Laws, 1991, ch. 427, § 1; Laws, 2007, ch. 365, § 1; Laws, 2014, ch. 457, § 51, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "At least fifteen (15) days" for "Within forty-eight (48) hours" at the beginning of the first sentence in the first undesignated paragraph.

§ 47-5-179. Department of Corrections to deduct nonemergency medical expenses from inmate accounts.

JUDICIAL DECISIONS

1. Constitutionality.

Inmate's complaint was procedurally barred as the inmate did not provide authority for the inmate's claim that Miss. Code Ann. § 47-5-179, under which the inmate was charged $ 6 for medical care, deprived the inmate of the inmate's property without due process of law in violation of the Fourteenth Amendment, U.S. Const. Amend. XIV, and the Takings Clause of the Fifth Amendment, U.S. Const. Amend. V; further, the facility's personnel abided by MDOC Policy 25-02-A, and complied with statutory authority, and did not deny the inmate nonemergency medical care due to a lack of funds. Clincy v. Atwood, 65 So. 3d 327 (Miss. Ct. App. 2011).

§ 47-5-180. Appointment of commissioner to make health-care decisions for offender who lacks capacity and does not have relative available; procedure; applicability of Uniform Health-Care Decisions Act.

(1) The following words and phrases that are used in this section are defined in Section 41-41-203: advance health-care directive, agent, capacity, guardian, health-care decision, individual instruction, person, power of attorney for health care and surrogate.

(2) For an offender who is a resident of Mississippi, the department may petition the chancery court of the county of residence of the offender to appoint the commissioner as guardian for an offender who lacks the capacity to make a health-care decision and who does not have a relative or other person available to make the decision.

(3) The department may, consistent with Sections 41-41-201 through 41-41-229, provide an offender with the forms necessary to execute an advance health-care directive.

(4) The department shall place an original or copy of the directive in the offender's medical record, attach the directive to the offender's commitment report and provide a copy of the directive to case management.

(5) If a department physician determines that an offender's life expectancy is less than one (1) year or that the offender is to undergo certain medical procedures to be determined by the department medical director, the department shall provide the offender with the opportunity to alter or execute a written advance health-care directive.

(6) When the department provides an offender with the forms necessary to execute an advance health-care directive, Sections 41-41-201 through 41-41-229 and the following provisions apply:

(a) Absent a court order to the contrary, an offender in the department's custody shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate another offender as the agent, guardian or surrogate without judicial approval if the offenders are related by blood, marriage or adoption.

(b) Absent a court order to the contrary, a department employee shall not act as the agent, guardian or surrogate for the offender executing an advance health-care directive. But the principal offender may designate a department employee as the agent, guardian or surrogate without judicial approval if the offender and the employee are related by blood, marriage or adoption.

(c) In addition to the restrictions in Section 41-41-205, neither an offender in the department's custody nor a department employee shall be used as a witness for a power of attorney for health care that an offender executes while in the department's custody.

SOURCES: Laws, 2012, ch. 529, § 1, eff from and after July 1, 2012.

§ 47-5-183. Department of Corrections may create a postconviction DNA database.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC DRUGS, WEAPONS, AND OTHER CONTRABAND

SEC.
47-5-193. Prohibitions generally.

§ 47-5-193. Prohibitions generally.

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined, of any municipal or other correctional facility in this state, or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, contraband item, or cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, contraband item, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers on property within the state belonging to the department, a county, a municipality, or other entity that is occupied or used by offenders, except as authorized by law.

SOURCES: Laws, 1978, ch. 394, § 1; Laws, 1986, ch. 423, § 4; Laws, 1996, ch. 420, § ; Laws, 1998, ch. 391, § 1; Laws, 2004, ch. 429, § 1; Laws, 2006, ch. 439, § 1; Laws, 2008, ch. 415, § 1; Laws, 2012, ch. 325, § 1, eff from and after passage (approved Apr. 5, 2012.)

Amendment Notes — The 2012 amendment inserted "of any municipal or other correctional facility in this state," twice inserted "contraband item" preceding "cell phone," and twice substituted "(SIM) cards or chargers" for "(SIM) cards, chargers, etc., or contraband items," inserted "within the state" and "a county, a municipality, or other entity" near the end and made stylistic changes.

JUDICIAL DECISIONS

1. Evidence.
2. — Sufficient.

1. Evidence.

2. — Sufficient.

Overwhelming weight of the evidence supported jury's conviction of defendant for possession of a cell phone within a correctional facility. The evidence established that during a search of defendant, a cell phone fell out of his pants and that a twenty-two minute call had been made on the phone to one of defendant's family members. Pruitt v. State, 122 So. 3d 806 (Miss. Ct. App. 2013).

There was sufficient testimony to support a jury's verdict that defendant was guilty of bringing contraband into a prison in violation of Miss. Code § 47-5-193, as a corrections officer testified that the officer found money in defendant's bra. Weems v. State, 63 So. 3d 579 (Miss. Ct. App. 2010), writ of certiorari dismissed by 2011 Miss. LEXIS 302 (Miss. June 16, 2011).

MISSISSIPPI PRISON INDUSTRIES ACT OF 1990

SEC.
47-5-572. Repealed.

§ 47-5-572. Repealed.

Repealed by its own terms, effective July 1, 2011.

§ 47-5-572. [Laws, 2004, ch. 502, § 1; Laws, 2007, ch. 352, § 1, eff from and after passage (approved Mar. 15, 2007.)]

Editor's Note — Former § 47-5-572 prohibited private correctional facilities from importing goods made by inmates in another state.

PRISON OVERCROWDING EMERGENCY POWERS ACT

SEC.
47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

§ 47-5-701. Short title [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 1; reenacted, Laws, 1986, ch. 413, § 127; reenacted, Laws, 1987, ch. 335, § 1; reenacted, Laws, 1988, ch. 504, § 44; reenacted, Laws, 1990, ch. 315, § 1; reenacted, Laws, 1993, ch. 419, § 1; reenacted without change, Laws, 1999, ch. 537, § 1; reenacted without change, Laws, 2001, ch. 411, § 1; reenacted without change, Laws, 2002, ch. 615, § 1; reenacted without change, Laws, 2005, ch. 519, § 1; reenacted without change, Laws, 2006, ch. 395, § 1; reenacted without change, Laws, 2008, ch. 322, § 1; reenacted without change, Laws, 2012, ch. 322, § 1; reenacted without change, Laws, 2014, ch. 316, § 1, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 1, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-703. Definitions [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 2; reenacted, Laws, 1986, ch. 413, § 128; reenacted, Laws, 1987, ch. 335, § 2; reenacted and amended, Laws, 1988, ch. 504, § 45; reenacted, Laws, 1990, ch. 315, § 2; reenacted, Laws, 1993, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 537, § 2; reenacted without change, Laws, 2001, ch. 411, § 2; reenacted without change, Laws, 2002, ch. 615, § 2; reenacted without change, Laws, 2005, ch. 519, § 2; reenacted without change, Laws, 2006, ch. 395, § 2; reenacted without change, Laws, 2008, ch. 322, § 2; reenacted without change, Laws, 2012, ch. 322, § 2; reenacted without change, Laws, 2014, ch. 316, § 2, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 2, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-705. Requirements for declaration of state of emergency [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 3; reenacted, Laws, 1986, ch. 413, § 129; reenacted, Laws, 1987, ch. 335, § 3; reenacted, Laws, 1988, ch. 504, § 46; reenacted, Laws, 1990, ch. 315, § 3; reenacted, Laws, 1993, ch. 419, § 3; reenacted without change, Laws, 1999, ch. 537, § 3; reenacted without change, Laws, 2001, ch. 411, § 3; reenacted without change, Laws, 2002, ch. 615, § 3; reenacted without change, Laws, 2005, ch. 519, § 3; reenacted without change, Laws, 2006, ch. 395, § 3; reenacted and amended, Laws, 2008, ch. 322, § 3; reenacted without change, Laws, 2012, ch. 322, § 3; reenacted without change, Laws, 2014, ch. 316, § 3, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 3, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-707. Notice of overcrowded prison conditions; thirty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 4; reenacted, Laws, 1986, ch. 413, § 130; reenacted, Laws, 1987, ch. 335, § 4; reenacted and amended, Laws, 1988, ch. 504, § 47; reenacted, Laws, 1990, ch. 315, § 4; reenacted, Laws, 1993, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 537, § 4; reenacted without change, Laws, 2001, ch. 411, § 4; reenacted without change, Laws, 2002, ch. 615, § 4; reenacted without change, Laws, 2005, ch. 519, § 4; reenacted without change, Laws, 2006, ch. 395, § 4; reenacted without change, Laws, 2008, ch. 322, § 4; reenacted without change, Laws, 2012, ch. 322, § 4; reenacted without change, Laws, 2014, ch. 316, § 4, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 4, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-709. Thirty-day report by State Parole Board [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 5; reenacted, Laws, 1986, ch. 413, § 131; reenacted, Laws, 1987, ch. 335, § 5; reenacted, Laws, 1988, ch. 504, § 48; reenacted, Laws, 1990, ch. 315, § 5; reenacted, Laws, 1993, ch. 419, § 5; reenacted without change, Laws, 1999, ch. 537, § 5; reenacted without change, Laws, 2001, ch. 411, § 5; reenacted without change, Laws, 2002, ch. 615, § 5; reenacted without change, Laws, 2005, ch. 519, § 5; reenacted without change, Laws, 2006, ch. 395, § 5; reenacted without change, Laws, 2008, ch. 322, § 5; reenacted without change, Laws, 2012, ch. 322, § 5; reenacted without change, Laws, 2014, ch. 316, § 5, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 5, effective from and after passage (approved March 12, 2014). Since the language of the section as

it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-711. Powers of Governor upon receipt of reports [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 6; reenacted, Laws, 1986, ch. 413, § 132; reenacted, Laws, 1987, ch. 335, § 6; reenacted and amended, Laws, 1988, ch. 504, § 49; reenacted, Laws, 1990, ch. 315, § 6; reenacted, Laws, 1993, ch. 419, § 6; reenacted without change, Laws, 1999, ch. 537, § 6; reenacted without change, Laws, 2001, ch. 411, § 6; reenacted without change, Laws, 2002, ch. 615, § 6; reenacted without change, Laws, 2005, ch. 519, § 6; reenacted without change, Laws, 2006, ch. 395, § 6; reenacted and amended, Laws, 2008, ch. 322, § 6; reenacted without change, Laws, 2012, ch. 322, § 6; reenacted without change, Laws, 2014, ch. 316, § 6, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 6, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-713. Advancement of parole eligibility dates during state of emergency [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 7; reenacted, Laws, 1986, ch. 413, § 133; reenacted, Laws, 1987, ch. 335, § 7; reenacted, Laws, 1988, ch. 504, § 50; reenacted, Laws, 1990, ch. 315, § 7; reenacted, Laws, 1993, ch. 419, § 7; reenacted without change, Laws, 1999, ch. 537, § 7; reenacted without change, Laws, 2001, ch. 411, § 7; reenacted without change, Laws, 2002, ch. 615, § 7; reenacted without change, Laws, 2005, ch. 519, § 7; reenacted without change, Laws, 2006, ch. 395, § 7; reenacted without change, Laws, 2008, ch. 322, § 7; reenacted without change, Laws, 2012, ch. 322, § 7; reenacted without change, Laws, 2014, ch. 316, § 7, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 7, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-715. Weekly certification of population figures during state of emergency; termination of state of emergency [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 8; reenacted, Laws, 1986, ch. 413, § 134; reenacted, Laws, 1987, ch. 335, § 8; reenacted, Laws, 1988, ch. 504, § 51; reenacted, Laws, 1990, ch. 315, § 8; reenacted, Laws, 1993, ch. 419, § 8; reenacted without change, Laws, 1999, ch. 537, § 8; reenacted without change, Laws, 2001, ch. 411, § 8; reenacted without change, Laws, 2002, ch. 615, § 8; reenacted without change, Laws, 2005, ch. 519, § 8; reenacted without change, Laws, 2006, ch. 395, § 8; reenacted without change, Laws, 2008, ch. 322, § 8; reenacted without change, Laws, 2012, ch. 322, § 8; reenacted without change, Laws, 2014, ch. 316, § 8, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 8, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-717. Sixty-day report of overcrowded prison conditions [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 9; reenacted, Laws, 1986, ch. 413, § 135; reenacted, Laws, 1987, ch. 335, § 9; reenacted and amended, Laws, 1988, ch. 504, § 52; reenacted, Laws, 1990, ch. 315, § 9; reenacted, Laws, 1993, ch. 419, § 9; reenacted without change, Laws, 1999, ch. 537, § 9; reenacted without change, Laws, 2001, ch. 411, § 9; reenacted without change, Laws, 2002, ch. 615, § 9; reenacted without change, Laws, 2005, ch. 519, § 9; reenacted without change, Laws, 2006, ch. 395, § 9; reenacted without change, Laws, 2008, ch. 322, § 9; reenacted without change, Laws, 2012, ch. 322, § 9; reenacted without change, Laws, 2014, ch. 316, § 9, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 9, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-719. Powers of Governor upon receipt of report [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 10; reenacted, Laws, 1986, ch. 413, § 136; reenacted, Laws, 1987, ch. 335, § 10; reenacted and amended, Laws, 1988, ch. 504, § 53; reenacted, Laws, 1990, ch. 315, § 10; reenacted, Laws, 1993, ch. 419, § 10; reenacted without change, Laws, 1999, ch. 537, § 10; reenacted without change, Laws, 2001, ch. 411, § 10; reenacted without change, Laws, 2002, ch. 615, § 10; reenacted without change, Laws, 2005, ch. 519, § 10; reenacted without change, Laws, 2006, ch. 395, § 10; reenacted and amended, Laws, 2008, ch. 322, § 10; reenacted without change Laws, 2012, ch. 322, § 10; reenacted without change, Laws, 2014, ch. 316, § 10, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 10, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-721. Termination of state of emergency by order of Governor [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 11; reenacted, Laws, 1986, ch. 413, § 137; reenacted, Laws, 1987, ch. 335, § 11; reenacted, Laws, 1988, ch. 504, § 54; reenacted, Laws, 1990, ch. 315, § 11; reenacted, Laws, 1993, ch. 419, § 11; reenacted without change, Laws, 1999, ch. 537, § 11; reenacted without change, Laws, 2001, ch. 411, § 11; reenacted without change, Laws, 2002, ch. 615, § 11; reenacted without change, Laws, 2005, ch. 519, § 11; reenacted without change, Laws, 2006, ch. 395, § 11; reenacted without change, Laws, 2008, ch. 322, § 11; reenacted without change, Laws, 2012, ch. 322, § 11; reenacted without change, Laws, 2014, ch. 316, § 11, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 11, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-723. Revocation of conditional advancement of parole eligibility date [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 12; reenacted, Laws, 1986, ch. 413, § 138; reenacted, Laws, 1987, ch. 335, § 12; reenacted, Laws, 1988, ch. 504, § 55; reenacted, Laws, 1990, ch. 315, § 12; reenacted, Laws, 1993, ch. 419, § 12; reenacted without change, Laws, 1999, ch. 537, § 12; reenacted without change, Laws, 2001, ch. 411, § 12; reenacted without change, Laws, 2002, ch. 615, § 12; reenacted without change, Laws, 2005, ch. 519, § 12; reenacted without change, Laws, 2006, ch. 395, § 12; reenacted without change, Laws, 2008, ch. 322, § 12; reenacted without change, Laws, 2012, ch. 322, § 12; reenacted without change, Laws, 2014, ch. 316, § 12, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 12, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-725. Conditions of advancement of parole eligibility date [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 13; reenacted, Laws, 1986, ch. 413, § 139; reenacted, Laws, 1987, ch. 335, § 13; reenacted, Laws, 1988, ch. 504, § 56; reenacted, Laws, 1990, ch. 315, § 13; reenacted, Laws, 1993, ch. 419, § 13; reenacted without change, Laws, 1999, ch. 537, § 13; reenacted without change, Laws, 2001, ch. 411, § 13; reenacted without change, Laws, 2002, ch. 615, § 13; reenacted without change, Laws, 2005, ch. 519, § 13; reenacted without change, Laws, 2006, ch. 395, § 13; reenacted without change, Laws, 2008, ch. 322, § 13; reenacted without change, Laws, 2012, ch. 322, § 13; reenacted without change, Laws, 2014, ch. 316, § 13, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 13, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-727. Advancement of parole eligibility date to be independent of other adjustments [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 14; reenacted, Laws, 1986, ch. 413, § 140; reenacted, Laws, 1987, ch. 335, § 14; reenacted, Laws, 1988, ch. 504, § 57; reenacted, Laws, 1990, ch. 315, § 14; reenacted, Laws, 1993, ch. 419, § 14; reenacted without change, Laws, 1999, ch. 537, § 14; reenacted without change, Laws, 2001, ch. 411, § 14; reenacted without change, Laws, 2002, ch. 615, § 14; reenacted without change, Laws, 2005, ch. 519, § 14; reenacted without change, Laws, 2006, ch. 395, § 14; reenacted and amended, Laws, 2008, ch. 322, § 14; reenacted without change Laws, 2012, ch. 322, § 14; reenacted without change, Laws, 2014, ch. 316, § 14, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 14, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-729. Establishment and quarterly certification or alteration of operating capacities [Repealed effective July 1, 2018].

SOURCES: Laws, 1985, ch. 499, § 15; reenacted, Laws, 1986, ch. 413, § 141; reenacted, Laws, 1987, ch. 335, § 15; reenacted and amended, Laws, 1988, ch. 504, § 58; reenacted, Laws, 1990, ch. 315, § 15; reenacted, Laws, 1993, ch. 419, § 15; reenacted without change, Laws, 1999, ch. 537, § 15; reenacted without change, Laws, 2001, ch. 411, § 15; reenacted without change, Laws, 2002, ch. 615, § 15; reenacted without change, Laws, 2005, ch. 519, § 15; reenacted without change, Laws, 2006, ch. 395, § 15; reenacted without change, Laws, 2008, ch. 322, § 15; reenacted without change Laws, 2012, ch. 322, § 15; reenacted without change, Laws, 2014, ch. 316, § 15, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 322, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 316, § 15, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-731. Repeal of Sections 47-5-701 through 47-5-729.

Sections 47-5-701 through 47-5-729, Mississippi Code of 1972, which create the Prison Overcrowding Emergency Powers Act, shall stand repealed from and after July 1, 2018.

SOURCES: Laws, 1986, ch. 413, § 142; Laws, 1987, ch. 335, § 16; Laws, 1988, ch. 504, § 59; Laws, 1990, ch. 315, § 16; Laws, 1991, ch. 378 § 1; Laws, 1993, ch. 419, § 16; Laws, 1994, ch. 312, § 1; Laws, 1995, ch. 389, § 1; Laws, 1999, ch. 537, § 16; Laws, 2001, ch. 411, § 16; Laws, 2002, ch. 615 , § 16; reenacted and amended, Laws, 2005, ch. 519, § 16; Laws, 2006, ch. 395, § 16; Laws, 2008, ch. 322, § 16; reenacted and amended, Laws, 2012, ch. 322, § 16; reenacted and amended, Laws, 2014, ch. 316, § 16, eff from and after passage (approved Mar. 12, 2014.)

Amendment Notes — The 2012 amendment reenacted and amended the section by extending the repealer provision from "July 1, 2012" to "July 1, 2014."

The 2014 amendment reenacted and amended the section by extending the repealer provision from "July 1, 2014" to "July 1, 2018."

ADMINISTRATIVE REVIEW PROCEDURE

§ 47-5-801. Authority to adopt administrative review procedure.

JUDICIAL DECISIONS

1. Administrative review procedures.

Appellant's motion for post-conviction collateral relief was properly dismissed because it was barred as a successive motion Miss. Code Ann. § 99-39-23(6) (Supp. 2011), and he did not meet an exception. Rather, appellant raised issues of inmate classification that were within the administrative purview of the department of corrections under Miss. Code Ann. §§ 47-5-801 — 47-5-807 (Rev. 2004) and not an issue properly brought in a post-conviction collateral relief motion. Cosner v. State, 111 So. 3d 111 (Miss. Ct. App. 2013).

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

§ 47-5-803. Procedure constitutes administrative remedies available to offenders for purpose of preserving cause of action against state.

JUDICIAL DECISIONS

3. Failure to exhaust administrative remedies.

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

§ 47-5-807. Judicial review of agency decision.

JUDICIAL DECISIONS

3. Right to judicial review.

Inmate's appeal of a judgment denying his motion to mandate parole eligibility on his life sentence pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act was dismissed under Miss. Code Ann. § 47-5-803(2) because the inmate did not exhaust his administrative remedies; the Mississippi Department of Corrections (MDOC) had determined that the inmate was ineligible for parole consideration by the parole board, but the record was completely bare as to any proof that the inmate ever exhausted his administrative remedies or even voiced his grievance through the MDOC's administrative-review procedure. Keys v. State, 67 So. 3d 783 (Miss. Ct. App. 2010), reversed by 67 So. 3d 758, 2011 Miss. LEXIS 389 (Miss. 2011).

STATE OFFENDERS SERVING SENTENCES IN COUNTY JAILS

SEC.

47-5-901. Service of sentence in county jail if space unavailable in state facility; reimbursement of costs; governmental liability [Repealed effective July 1, 2016].

47-5-911. Repeal of Sections 47-5-901 through 47-5-911 [Repealed effective July 1, 2016].

§ 47-5-901. Service of sentence in county jail if space unavailable in state facility; reimbursement of costs; governmental liability [Repealed effective July 1, 2016].

(1) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(2) If state prisoners are housed in county jails due to a lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner. In order to maximize the potential use of county jail space, the Department of Corrections is encouraged to negotiate a reasonable per day cost per prisoner, which in no event may exceed Twenty Dollars ($20.00) per day per offender.

(3)(a) Upon vouchers submitted by the board of supervisors of any county housing persons due to lack of space at state institutions, the Department of Corrections shall pay to such county, out of any available funds, the actual cost of food, or contract price per prisoner, not to exceed Twenty Dollars ($20.00) per day per offender, as determined under subsection (2) of this section for each day an offender is so confined beginning the day that the Department of Corrections receives a certified copy of the sentencing order and will terminate on the date on which the offender is released or otherwise removed from the custody of the county jail. The department, or its contracted medical provider, will pay to a provider of a medical service for any and all incarcerated persons from a correctional or detention facility an amount based upon negotiated fees as agreed to by the medical care service providers and the department and/or its contracted medical provider. In the absence of negotiated discounted fee schedule, medical care service providers will be paid by the department, or its contracted medical service provider, an amount no greater than the reimbursement rate applicable based on the Mississippi Medicaid reimbursement rate. The board of supervisors of any county shall not be liable for any cost associated with medical attention for prisoners who are pretrial detainees or for prisoners who have been convicted that exceeds the Mississippi Medicaid reimbursement rate or the reimbursement provided by the Department of Corrections, whichever is greater. This limitation applies to all medical care services, durable and nondurable goods, prescription drugs and medications. Such payment shall

be placed in the county general fund and shall be expended only for food and medical attention for such persons.

(b) Upon vouchers submitted by the board of supervisors of any county housing offenders in county jails pending a probation or parole revocation hearing, the department shall pay the reimbursement costs provided in paragraph (a).

(c) If the probation or parole of an offender is revoked, the additional cost of housing the offender pending the revocation hearing shall be assessed as part of the offender's court cost and shall be remitted to the department.

(4) A person, on order of the sentencing court, may serve not more than twenty-four (24) months of his sentence in a county jail if the person is classified in accordance with Section 47-5-905 and the county jail is an approved county jail for housing state inmates under federal court order. The sheriff of the county shall have the right to petition the Commissioner of Corrections to remove the inmate from the county jail. The county shall be reimbursed in accordance with subsection (2) of this section.

(5) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

(7) An offender returned to a county for post-conviction proceedings shall be subject to the provisions of Section 99-19-42 and the county shall not receive the per-day allotment for such offender after the time prescribed for returning the offender to the Department of Corrections as provided in Section 99-19-42.

SOURCES: Laws, 1992, ch. 547, § 1; Laws, 1994 Ex Sess, ch. 26, § 16; Laws, 1995, ch. 566, § 2; reenacted without change, Laws, 1997, ch. 408, § 1; reenacted without change, Laws, 1998, ch. 419, § 1; reenacted without change, Laws, 2002, ch. 426, § 1; Laws, 2002, ch. 624, § 4; reenacted without change, Laws, 2003, ch. 421, § 1; reenacted and amended, Laws, 2004, ch. 537, § 1; reenacted without change, Laws, 2005, ch. 395, § 1; reenacted and amended, Laws, 2007, ch. 603, § 1; reenacted without change, Laws, 2008, ch. 323, § 1; Laws, 2010, ch. 490, § 1; reenacted without change, Laws, 2012, ch. 317, § 1; Laws, 2014, ch. 457, § 59, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 317, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment was reenacted without change.

The 2014 amendment, in (3)(b), deleted "out of any available funds," following "the department shall pay"; and in (4), added "of this section" to the end.

§ 47-5-903. Other conditions under which sentence may be served in county jail; governmental liability [Repealed effective July 1, 2016].

SOURCES: Laws, 1992, ch. 547, § 2; reenacted without change, Laws, 1997, ch. 408, § 2; reenacted without change, Laws, 1998, ch. 419, § 2; reenacted without change, Laws, 1999, ch. 538, § 2; reenacted without change, Laws, 2002, ch. 426, § 2; reenacted without change, Laws, 2003, ch. 421, § 2; reenacted without change, Laws, 2004, ch. 537, § 2; reenacted without change, Laws, 2005, ch. 395, § 2; reenacted without change, Laws, 2007, ch. 603, § 2; reenacted without change, Laws, 2008, ch. 323, § 2; reenacted without change Laws, 2012, ch. 317, § 2, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

This section was reenacted without change by Laws of 2012, ch. 317, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 47-5-905. Processing and classification of inmates [Repealed effective July 1, 2016].

SOURCES: Laws, 1992, ch. 547, § 3; reenacted without change, Laws, 1997, ch. 408, § 3; reenacted without change, Laws, 1998, ch. 419, § 3; reenacted without change, Laws, 1999, ch. 538, § 3; reenacted without change, Laws, 2002, ch. 426, § 3; reenacted without change, Laws, 2003, ch. 421, § 3; reenacted without change, Laws, 2004, ch. 537, § 3; reenacted without change, Laws, 2005, ch. 395, § 3; reenacted without change, Laws, 2007, ch. 603, § 3; reenacted without change, Laws, 2008, ch. 323, § 3; reenacted without change, Laws, 2012, ch. 317, § 3, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

This section was reenacted without change by Laws of 2012, ch. 317, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 47-5-907. Removal of state inmate from county jail; petition; grounds; immunity from liability [Repealed effective July 1, 2016].

SOURCES: Laws, 1992, ch. 547, § 4; reenacted without change, Laws, 1997, ch. 408, § 4; reenacted without change, Laws, 1998, ch. 419, § 4; reenacted without change, Laws, 1999, ch. 538, § 4; reenacted without change, Laws, 2002, ch. 426, § 4; reenacted without change, Laws, 2003, ch. 421, § 4;

reenacted without change, Laws, 2004, ch. 537, § 4; reenacted without change, Laws, 2005, ch. 395, § 4; reenacted without change, Laws, 2007, ch. 603, § 4; reenacted without change, Laws, 2008, ch. 323, § 4; reenacted without change, Laws, 2012, ch. 317, § 4, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

This section was reenacted without change by Laws of 2012, ch. 317, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 47-5-909. Incarceration in county jails as temporary measure only [Repealed effective July 1, 2016].

SOURCES: Laws, 1992, ch. 547, § 5; reenacted without change, Laws, 1997, ch. 408, § 5; reenacted without change, Laws, 1998, ch. 419, § 5; reenacted without change, Laws, 1999, ch. 538, § 5; reenacted without change, Laws, 2002, ch. 426, § 5; reenacted without change, Laws, 2003, ch. 421, § 5; reenacted without change, Laws, 2004, ch. 537, § 5; reenacted without change, Laws, 2005, ch. 395, § 5; reenacted without change, Laws, 2007, ch. 603, § 5; reenacted without change, Laws, 2008, ch. 323, § 5; reenacted without change, Laws, 2012, ch. 317, § 5, eff from and after passage (approved Apr. 5, 2012.)

Editor's Note — For the repeal date of this section, see § 47-5-911.

This section was reenacted without change by Laws of 2012, ch. 317, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 47-5-911. Repeal of Sections 47-5-901 through 47-5-911 [Repealed effective July 1, 2016].

Sections 47-5-901 through 47-5-911 shall stand repealed on July 1, 2016.

SOURCES: Laws, 1992, ch. 547, § 6; Laws, 1994, ch. 311, § 1; Laws, 1995, ch. 418, § 1; Laws, 1997, ch. 408, § 6; Laws, 1998, ch. 419, § 6; Laws, 1999, ch. 538, § 6; Laws, 2001, ch. 364, § 1; Laws, 2003, ch. 421, § 6; Laws, 2004, ch. 537, § 6; Laws, 2005, ch. 395, § 6; Laws, 2007, ch. 354, § 1; Laws, 2007, ch. 603, § 6; Laws, 2008, ch. 323, § 6; reenacted and amended Laws, 2012, ch. 317, § 6; Laws, 2014, ch. 457, § 60, eff from and after July 1, 2014.

Amendment Notes — The 2012 amendment reenacted and amended the section by extending the repealer provision from "July 1, 2012" to "July 1, 2014."

The 2014 amendment extended the repealer provision from "July 1, 2014" to "July 1, 2016."

INCARCERATION OF STATE OFFENDERS IN COUNTY OWNED OR LEASED CORRECTIONAL FACILITIES

SEC.

47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.
47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2015].
47-5-943. Contracts for incarceration; compliance with standards and statutes.
47-5-947. Repealed.
47-5-949. Continuing education; high school level degree; vocational education.

§ 47-5-931. Authorization for incarceration of state offenders at county or regional correctional facility.

(1) The Department of Corrections, in its discretion, may contract with the board of supervisors of one or more counties and/or with a regional facility operated by one or more counties, to provide for housing, care and control of offenders who are in the custody of the State of Mississippi. Any facility owned or leased by a county or counties for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of Mississippi, and with all court orders that may now or hereinafter be applicable to the facility. If the Department of Corrections contracts with more than one (1) county to house state offenders in county correctional facilities, excluding a regional facility, then the first of such facilities shall be constructed in Sharkey County and the second of such facilities shall be constructed in Jefferson County.

(2) The Department of Corrections shall contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Marion and Walthall Counties; (b) Carroll and Montgomery Counties; (c) Stone and Pearl River Counties; (d) Winston and Choctaw Counties; (e) Kemper and Neshoba Counties; (f) Holmes County and any contiguous county in which there is located an unapproved jail; and (g) Bolivar County and any contiguous county in which there is located an unapproved jail. The Department of Corrections may contract with the board of supervisors of the following counties to house state inmates in regional facilities: (a) Yazoo County, (b) Chickasaw County, (c) George and Greene Counties, (d) Washington County, (e) Hinds County, and (f) Alcorn County. The Department of Corrections shall decide the order of priority of the counties listed in this subsection with which it will contract for the housing of state inmates. For the purposes of this subsection, the term "unapproved jail" means any jail that the local grand jury determines should be condemned or has found to be of substandard condition or in need of substantial repair or reconstruction.

(3) In addition to the offenders authorized to be housed under subsection (1) of this section, the Department of Corrections may contract with the Kemper and Neshoba regional facility to provide for housing, care and control

of not more than seventy-five (75) additional offenders who are in the custody of the State of Mississippi.

SOURCES: Laws, 1995, ch. 585, § 1; Laws, 1997, ch. 457, § 1; Laws, 1999, ch. 526, § 1; Laws, 2004, ch. 472, § 1; Laws, 2007, ch. 539, § 1; Laws, 2013, ch. 422, § 1; Laws, 2014, ch. 321, § 1, eff from and after passage (approved Mar. 25, 2014.)

Amendment Notes — The 2013 amendment substituted "board of supervisors" for "boards of supervisors" in the first and second sentences in (2); and substituted "(75) additional offenders" for "(75) female offenders" in (3).

The 2014 amendment, in (1), deleted "not more than three hundred (300)" following ", to provide for housing, care and control of"; and in (3), deleted "number of" following "In addition to the."

§ 47-5-940. Authorization for drug and alcohol treatment pilot program at Bolivar County Regional Facility [Repealed effective July 3, 2015].

(1)(a) The Department of Corrections may contract with the Bolivar County Regional Facility for a five-year pilot program dedicated to an intensive and comprehensive alcohol and other drug treatment program for not more than two hundred fifty (250) inmates. The Bolivar County Regional Facility shall have the option of canceling the contract for the drug treatment program after giving the Department of Corrections thirty (30) days' notice of its intent to cancel. The program shall be a prison-based treatment program designed to reduce substance abuse by inmates, correct dysfunctional thinking and behavioral patterns, and prepare inmates to make a successful and crime-free readjustment to the community.

(b) The Department of Corrections shall reimburse the Bolivar County Regional Facility at the per diem rate allowed under Section 47-5-933.

(2)(a) An inmate who is within eighteen (18) months of his earned release date or parole date may be placed in the program.

(b) The Department of Corrections shall remove any inmate within seventy-two (72) hours after being notified by the Bolivar County Regional Facility that the inmate is violent or refuses to participate in the drug treatment program.

(3) The program shall consist, but is not limited to, the following components:

(a) An assessment and placement component using a recidivism needs assessment of the inmates.

(b) An intensive and comprehensive treatment and rehabilitation component which addresses the specific drug or alcohol problem of the inmate. This component shall include relapse prevention strategies, anger management strategies and regimented discipline strategies.

(c) An aftercare post-release component that has a specific transition plan for each inmate. The transition plan must address specific post-release needs such as employment, housing, medical care, relapse prevention and

treatment. The plan shall require personnel to assist the inmate with these needs and to assist in finding community-based programs for the inmate. The plan shall require the inmate to be tracked in at least thirty-day intervals to measure compliance with his established transition plan.

(d) A monitoring assessment of recidivism containing post-release history of substance abuse, breaches of trust, arrests, convictions, employment, community functioning, and marital and family interaction.

(4) The department shall file a report annually on the program with specific data on recidivism of inmates including the data required in subsection (3)(d).

(5) The program authorized under this section may be renewed if it meets performance requirements as may be determined by the Legislature.

(6) This section shall repeal on July 3, 2015.

SOURCES: Laws, 2002, ch. 617, § 13; Laws, 2007, ch. 534, § 1; Laws, 2009, ch. 504, § 1; reenacted and amended, Laws, 2012, ch. 393, § 1, eff from and after passage (approved Apr. 18, 2012.)

Amendment Notes — The 2012 amendment reenacted and amended the section by extending the repealer from "July 3, 2010" to "July 3, 2015" at the end of (6).

§ 47-5-943. Contracts for incarceration; compliance with standards and statutes.

The Mississippi Department of Corrections may contract with the Walnut Grove Correctional Authority or the governing authorities of the Municipality of Walnut Grove, Leake County, Mississippi, to provide for the private housing, care and control of not more than one thousand five hundred (1,500) offenders who are in the custody of the Department of Corrections at a maximum security facility in Walnut Grove. A county or circuit judge shall not order any offender to be housed in the correctional facility authorized in Sections 47-5-943 through 47-5-953. Commitment of offenders shall not be to this facility, but shall be to the jurisdiction of the department. The commissioner shall assign newly sentenced offenders to an appropriate facility consistent with public safety. Any facility owned or leased by the Walnut Grove Correctional Authority or the Municipality of Walnut Grove for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of Mississippi and with all court orders that may now or hereinafter be applicable to the facility. The contract must comply with Sections 47-5-1211 through 47-5-1227.

SOURCES: Laws, 1998, ch. 562, § 1; Laws, 2002, ch. 579, § 1; Laws, 2004, ch. 537, § 7; Laws, 2005, ch. 517, § 1; Laws, 2007, ch. 417, § 1; Laws, 2012, ch. 489, § 1, eff from and after passage (approved Apr. 26, 2012.)

Amendment Notes — The 2012 amendment deleted "juvenile" preceding "offenders who are in the custody of" in the first sentence; deleted the former second sentence which read: "The maximum age of any offender housed in this facility shall be

twenty-two (22) years of age, and upon reaching his or her twenty-second birthday, the offender must be removed from the facility speedily and within a reasonable amount of time"; substituted "offender for "juvenile" in the second sentence; and deleted "juvenile" preceding "offenders shall not be to this facility" in the third sentence.

§ 47-5-947. Repealed.

Repealed by Laws of 2012, ch. 395, § 1, effective July 1, 2012.

§ 47-5-947. [Laws, 1998, ch. 562, § 3, eff from and after passage (approved April 17, 1998).]

Editor's Note — Former § 47-5-947 provided for the implementation of the regimented inmate discipline program at the Walnut Grove Correctional Facility.

§ 47-5-949. Continuing education; high school level degree; vocational education.

The correctional facility authorized in Section 47-5-943 shall provide any juvenile offender housed in the facility with continuing education throughout his incarceration which leads to the presentation of a high school diploma or High School Equivalency Diploma equivalent. The facility also shall provide a program of vocational education, which is to be included in the continuing education program for a high school diploma or High School Equivalency Diploma equivalent.

SOURCES: Laws, 1998, ch. 562, § 4; Laws, 2014, ch. 398, § 15, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "High School Equivalency Diploma" for "General Education Development (GED)" in the first and second sentences.

INTENSIVE SUPERVISION PROGRAM; ELECTRONIC HOME DETENTION

SEC.

47-5-1001. Definitions [Repealed effective after June 30, 2018].
47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; provision of certain data to Oversight Task Force [Repealed effective after June 30, 2018].
47-5-1007. Payment of monthly fee by participant who is employed; payment of monthly fee by juvenile offender; special fund; responsibilities of participant; notice regarding violation of detention [Repealed effective after June 30, 2018].
47-5-1015. Repeal of §§ 47-5-1001 through 47-5-1015 [Repealed effective after June 30, 2018].

§ 47-5-1001. Definitions [Repealed effective after June 30, 2018].

For purposes of Sections 47-5-1001 through 47-5-1015, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Approved electronic monitoring device" means a device approved by the department which is primarily intended to record and transmit information regarding the offender's presence or nonpresence in the home.

(b) "Correctional field officer" means the supervising probation and parole officer in charge of supervising the offender.

(c) "Court" means a circuit court having jurisdiction to place an offender into the intensive supervision program.

(d) "Department" means the Department of Corrections.

(e) "House arrest" means the confinement of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department or court.

(f) "Operating capacity" means the total number of state offenders which can be safely and reasonably housed in facilities operated by the department and in local or county jails or other facilities authorized to house state offenders as certified by the department, subject to applicable federal and state laws and rules and regulations.

(g) "Participant" means an offender placed into an intensive supervision program.

SOURCES: Laws, 1993, ch. 576, § 1; Laws, 1994, ch. 606, § 2; reenacted without change, Laws, 1999, ch. 539, § 1; reenacted without change, Laws, 2001, ch. 482, § 2; reenacted without change, Laws, 2003, ch. 418, § 1; reenacted without change, Laws, 2005, ch. 485, § 2; reenacted without change, Laws, 2006, ch. 392, § 1; reenacted without change, Laws, 2008, ch. 479, § 1; reenacted without change, Laws, 2012, ch. 316, § 1; reenacted without change, Laws, 2014, ch. 317, § 1, eff from and after passage (approved Mar. 12, 2014.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c) by substituting "a court having jurisdiction to place an offender into the intensive" for "a court having jurisdiction to place an offender to the intensive." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; provision of certain data to Oversight Task Force [Repealed effective after June 30, 2018].

(1) An intensive supervision program may be used as an alternative to incarceration for offenders who are not convicted of a crime of violence pursuant to Section 97-3-2 as selected by the court and for juvenile offenders as provided in Section 43-21-605. Any offender convicted of a sex crime shall not be placed in the program.

(2) The court may place the defendant on intensive supervision, except when a death sentence or life imprisonment is the maximum penalty which may be imposed by a court or judge.

(3) To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program may be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification hearing officer.

(4) When any circuit or county court places an offender in an intensive supervision program, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender in an intensive supervision program. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender in an intensive supervision program.

The courts may not require an offender to participate in the intensive supervision program during a term of probation or post-release supervision.

(5) The Department of Corrections shall provide to the Oversight Task Force all relevant data regarding the offenders participating in the intensive supervision program including the number of offenders admitted to the program annually, the number of offenders who leave the program annually and why they leave, the number of offenders who are arrested or convicted annually and the circumstances of the arrest and any other information requested.

SOURCES: Laws, 1993, ch. 576, § 2; Laws, 1994, ch. 606, § 3; Laws, 1994 Ex Sess, ch. 26, § 26; Laws, 1995, ch. 399, § 1; Laws, 1996, ch. 397, § 2; Laws, 1998, ch. 461, § 1; Laws, 2000, ch. 622, § 1; Laws, 2001, ch. 393, § 10; Laws, 2001, ch. 482, § 1; reenacted without change, Laws, 2003, ch. 418, § 2; reenacted without change, Laws, 2005, ch. 485, § 3; reenacted without change, Laws, 2006, ch. 392, § 2; Laws, 2008, ch. 313, § 1; reenacted, Laws, 2008, ch. 479, § 2; Laws, 2009, ch. 502, § 1; Laws, 2011, ch. 459, § 2; reenacted without change, Laws, 2012, ch. 316, § 2; reenacted without change, Laws, 2014, ch. 317, § 2; Laws, 2014, ch. 457, § 11, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 2 of Chapter 317, Laws of 2014, effective from and after passage (approved March 12, 2014), amended this section. Section 11 of Chapter 457, Laws of 2014, effective from and after July 1, 2014 (approved March 31, 2014), also amended this section. As set out above, this section reflects the language of Section 11 of Chapter 457, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The 2012 amendment reenacted the section without change.

The first 2014 amendment (ch. 317), reenacted the section without change.

The second 2014 amendment (ch. 457), in (1), substituted "not convicted of a crime of violence pursuant to Section 97-3-2" for "low risk and nonviolent," and deleted "department or" preceding "court and for juvenile offenders"; in (2), deleted "or the department" following "The court" and substituted "by a court of judge" for "or if the defendant has been convicted of a felony committed after having been confined for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon"; in (5), substituted "provide to the Oversight ... other information requested" for "or if the defendant has been convicted of a felony committed after effectiveness of the intensive supervision program before January 1, 2010."

Cross References — Oversight Task Force, see § 47-5-6.

JUDICIAL DECISIONS

2. Jurisdiction.

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. Hollingsworth v. State, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

§ 47-5-1005. Rules and guidelines for operation of intensive supervision program; approval and leasing of electronic monitoring devices [Repealed effective after June 30, 2018].

SOURCES: Laws, 1993, ch. 576, § 3; Laws, 2007, ch. 598, § 1; reenacted without change, Laws, 2008, ch. 479, § 3; reenacted without change, Laws, 2012, ch. 316, § 3; reenacted without change, Laws, 2014, ch. 317, § 3, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 317, § 3, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-1007. Payment of monthly fee by participant who is employed; payment of monthly fee by juvenile offender; special fund; responsibilities of participant; notice regarding violation of detention [Repealed effective after June 30, 2018].

(1) Any participant in the intensive supervision program who engages in employment shall pay a monthly fee to the department for each month such person is enrolled in the program. The department may waive the monthly fee if the offender is a full-time student or is engaged in vocational training. Juvenile offenders shall pay a monthly fee of not less than Ten Dollars ($10.00) but not more than Fifty Dollars ($50.00) based on a sliding scale using the standard of need for each family that is used to calculate TANF benefits. Money received by the department from participants in the program shall be deposited into a special fund which is hereby created in the State Treasury. It shall be used, upon appropriation by the Legislature, for the purpose of helping to defray the costs involved in administering and supervising such program. Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special fund shall be deposited to the credit of the special fund.

(2) The participant shall admit any correctional officer into his residence at any time for purposes of verifying the participant's compliance with the conditions of his detention.

(3) The participant shall make the necessary arrangements to allow for correctional officers to visit the participant's place of education or employment at any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of his detention.

(4) The participant shall acknowledge and participate with the approved electronic monitoring device as designated by the department at any time for the purpose of verifying the participant's compliance with the conditions of his detention.

(5) The participant shall be responsible for and shall maintain the following:

(a) A working telephone line in the participant's home;

(b) A monitoring device in the participant's home, or on the participant's person, or both; and

(c) A monitoring device in the participant's home and on the participant's person in the absence of a telephone.

(6) The participant shall obtain approval from the correctional field officer before the participant changes residence.

(7) The participant shall not commit another crime during the period of home detention ordered by the court or department.

(8) Notice shall be given to the participant that violation of the order of home detention shall subject the participant to prosecution for the crime of escape as a felony.

(9) The participant shall abide by other conditions as set by the court or the department.

SOURCES: Laws, 1993, ch. 576, § 4; reenacted without change, Laws, 1999, ch. 539, § 4; reenacted without change, Laws, 2001, ch. 482, § 4; reenacted without change, Laws, 2003, ch. 418, § 4; reenacted without change, Laws, 2005, ch. 485, § 5; reenacted without change, Laws, 2006, ch. 392, § 4; reenacted and amended, Laws, 2008, ch. 479, § 4; Laws, 2011, ch. 459, § 3; reenacted without change, Laws, 2012, ch. 316, § 4; reenacted without change, Laws, 2014, ch. 317, § 4; Laws, 2014, ch. 457, § 12, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 4 of Chapter 317, Laws of 2014, effective from and after passage (approved March 12, 2014), reenacted this section without change. Section 12 of Chapter 457, Laws of 2014, effective from and after July 1, 2014 (approved March 31, 2014), amended this section. As set out above, this section reflects the language of Section 12 of Chapter 457, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The 2012 amendment reenacted the section without change.

The first 2014 amendment (ch. 317), reenacted the section without change.

The second 2014 amendment (ch. 457), inserted "court or the" near the end of (9).

§ 47-5-1009. Immunity of department; audit [Repealed effective after June 30, 2018].

SOURCES: Laws, 1993, ch. 576, § 5; reenacted without change, Laws, 1999, ch. 539, § 5; reenacted without change, Laws, 2001, ch. 482, § 5; reenacted without change, Laws, 2003, ch. 418, § 5; reenacted without change, Laws, 2005, ch. 485, § 6; reenacted without change, Laws, 2006, ch. 392, § 5; reenacted without change, Laws, 2008, ch. 479, § 5; reenacted without change, Laws, 2012, ch. 316, § 5; reenacted without change, Laws, 2014, ch. 317, § 5, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 317, § 5, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted without change.

§ 47-5-1011. Prior notification of participant and co-residents regarding nature and extent of electronic monitoring devices; damage to equipment; noncriminal environment to be maintained [Repealed effective after June 30, 2018].

SOURCES: Laws, 1993, ch. 576, § 6; Laws, 1994, ch. 606, § 4; reenacted without change, Laws, 1999, ch. 539, § 6; reenacted without change, Laws, 2001, ch. 482, § 6; reenacted without change, Laws, 2003, ch. 418, § 6; reenacted without change, Laws, 2005, ch. 485, § 7; reenacted without change, Laws, 2006, ch. 392, § 6; reenacted without change, Laws, 2008, ch. 479, § 6; reenacted without change, Laws, 2012, ch. 316, § 6; reenacted without change, Laws, 2014, ch. 317, § 6, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 317, § 6, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-1013. Conditions for participation in intensive supervision program [Repealed effective after June 30, 2018].

SOURCES: Laws, 1993, ch. 576, § 7; reenacted without change, Laws, 1999, ch. 539, § 7; reenacted without change, Laws, 2001, ch. 482, § 7; reenacted without change, Laws, 2003, ch. 418, § 7; reenacted and amended, Laws, 2005, ch. 485, § 8; reenacted without change, Laws, 2006, ch. 392, § 7; reenacted and amended, Laws, 2008, ch. 479, § 7; Laws, 2010, ch. 492, § 1; Laws, 2011, ch. 459, § 4; reenacted without change, Laws, 2012, ch. 316, § 7; reenacted without change, Laws, 2014, ch. 317, § 7, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 317, § 7, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2014 amendment reenacted the section without change.

§ 47-5-1014. Monthly supervision fee for those participating in program since July 1, 2004 [Repealed effective after June 30, 2018].

SOURCES: Laws, 2005, ch. 485, § 10; reenacted without change, Laws, 2008, ch. 479, § 8; reenacted without change, Laws, 2012, ch. 316, § 8; reenacted without change, Laws, 2014, ch. 317, § 8, eff from and after passage (approved Mar. 12, 2014.)

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 316, effective from and after passage (approved April 5, 2012). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2014, ch. 317, § 8, effective from and after passage (approved March 12, 2014). Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2014 amendment reenacted the section without change.

§ 47-5-1015. Repeal of §§ 47-5-1001 through 47-5-1015 [Repealed effective after June 30, 2018].

Sections 47-5-1001 through 47-5-1015 shall stand repealed after June 30, 2018.

SOURCES: Laws, 1993, ch. 576, § 8; Laws, 1995, ch. 399, § 2; Laws, 1999, ch. 539, § 8; Laws, 2001, ch. 482, § 8; reenacted and amended, Laws, 2003, ch. 418, § 8; reenacted and amended, Laws, 2005, ch. 485, § 9; Laws, 2006, ch. 392, § 8; Laws, 2008, ch. 479, § 9; reenacted and amended, Laws, 2012, ch. 316, § 9; reenacted and amended, Laws, 2014, ch. 317, § 9, eff from and after passage (approved Mar. 12, 2014.)

Amendment Notes — The 2012 amendment reenacted and amended the section by extending the repealer provision from "June 30, 2012" to "June 30, 2014."

The 2014 amendment extended the repealer provision from "June 30, 2014" to "June 30, 2018."

STATE PRISON EMERGENCY CONSTRUCTION AND MANAGEMENT BOARD

Sec.

47-5-1211. Contracts for private correctional facilities or services; experience of contractor; rates and benefits standards.

§ 47-5-1211. Contracts for private correctional facilities or services; experience of contractor; rates and benefits standards.

(1) A contract for private correctional facilities or services shall not be entered into unless the contractor has demonstrated that it has:

(a) The qualifications, experience and management personnel necessary to carry out the terms of the contract.

(b) The ability to expedite the siting, design and construction of correctional facilities.

(c) The ability to comply with applicable laws, court orders and national correctional standards.

(d) Demonstrated history of successful operation and management of other correctional facilities.

(2) A facility shall at all times comply with all federal and state laws, and all applicable court orders.

(3)(a) No contract for private incarceration shall be entered into unless the cost of the private operation, including the state's cost for monitoring the private operation, offers a cost savings of at least ten percent (10%) to the Department of Corrections for at least the same level and quality of service offered by the Department of Corrections.

(b) Beginning in 2012, and every two (2) years thereafter, the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall contract with a certified public accounting firm to establish a state inmate cost per day using financial information of the Department of Corrections for the most recently completed fiscal year. The state inmate cost per day shall be certified as required by this section. The certified cost shall be used as the basis for measuring the validity of the ten percent (10%) savings of the contractor costs.

(c) Prior to engaging a certified public accountant, the PEER Committee, in conjunction with the Department of Corrections, shall develop a current cost-based model that will serve as a basis for the report produced as authorized by this section.

(4) The rates and benefits for correctional services shall be negotiated based upon American Correction Association standards, state law and court orders.

SOURCES: Laws, 1994, 1st Ex Sess, ch. 26, § 7; Laws, 2012, ch. 399, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote (3)(b) and added (c).

YOUTHFUL OFFENDERS

SEC.

47-5-1401. Establishment of Youthful Offender Unit at Central Mississippi Correctional Facility; age limitations on youth housed in unit.

§ 47-5-1401. Establishment of Youthful Offender Unit at Central Mississippi Correctional Facility; age limitations on youth housed in unit.

(1) The Mississippi Department of Corrections shall establish a Youthful Offender Unit ("YOU") at the Central Mississippi Correctional Facility. All

youth ages seventeen (17) years of age and under and who are assigned to a Mississippi Department of Corrections prison shall be housed in the YOU, except that nothing in this section shall prohibit the department from housing a youth who is seventeen (17) years of age and under in a community work center or other environments that are less restrictive than a Mississippi Department of Corrections prison.

(2) Youth ages seventeen (17) and under as prescribed in this section shall be housed in the YOU, separate from adult inmates. No individual who is over the age of nineteen (19) shall be housed in the YOU. The Commissioner of the Department of Corrections shall have discretion to house individuals who are eighteen (18) and nineteen (19) years of age and who have been classified as vulnerable in the YOU.

(3) The Mississippi Department of Corrections shall provide youth housed at the YOU with the opportunity for the appropriate amounts of interactive, structured rehabilitative and/or educational programming, recreational and leisure activities outside of their cells on a daily basis, including weekends and holidays. The programming developed, as prescribed in this subsection shall, to the extent possible, be tailored to the developmental needs of adolescents.

SOURCES: Laws, 2012, ch. 489, § 2, eff from and after passage (approved Apr. 26, 2012.)

CHAPTER 7

Probation and Parole

Probation and Parole Law 47-7-1

PROBATION AND PAROLE LAW

SEC.
47-7-2. Definitions.
47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.
47-7-3.1. Case plan for parole-eligible inmates; purpose; components.
47-7-3.2. Minimum time offenders convicted of crime of violence must serve before release; minimum percentage of other sentences offenders must serve before release.
47-7-4. Conditional medical release of prisoners; criteria; supervision; revocation.
47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2018].
47-7-6. Parole Board to collect certain information and report semiannually to Oversight Task Force.
47-7-9. General powers and duties of personnel of Division of Community Corrections as field supervisors and presentence investigators.
47-7-17. Examination of offender's record; eligibility for parole.

47-7-18. Conditions for release of parole-eligible inmates without hearing; hearing required under certain circumstances.
47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.
47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.
47-7-33.1. Pre-release assessment and written discharge plan.
47-7-34. Postrelease supervision program.
47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.
47-7-38. Graduated sanctions as alternative to judicial modification or revocation of parole, probation or post-release supervision.
47-7-38.1. Technical violation centers.
47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.
47-7-49. Creation of community service revolving fund; payments by offender on probation, parole, earned-release supervision, post-release supervision, or earned probation; disposition of payments; time limit on payments [Repealed effective June 30, 2015].

§ 47-7-2. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Adult" means a person who is seventeen (17) years of age or older, or any person convicted of any crime not subject to the provisions of the youth court law, or any person "certified" to be tried as an adult by any youth court in the state.

(b) "Board" means the State Parole Board.

(c) "Parole case plan" means an individualized, written accountability and behavior change strategy developed by the department in collaboration with the parole board to prepare offenders for release on parole at the parole eligibility date. The case plan shall focus on the offender's criminal risk factors that, if addressed, reduce the likelihood of reoffending.

(d) "Commissioner" means the Commissioner of Corrections.

(e) "Correctional system" means the facilities, institutions, programs and personnel of the department utilized for adult offenders who are committed to the custody of the department.

(f) "Criminal risk factors" means characteristics that increase a person's likelihood of reoffending. These characteristics include: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse.

(g) "Department" means the Mississippi Department of Corrections.

(h) "Detention" means the temporary care of juveniles and adults who require secure custody for their own or the community's protection in a

physically restricting facility prior to adjudication, or retention in a physically restricting facility upon being taken into custody after an alleged parole or probation violation.

(i) "Discharge plan" means an individualized written document that provides information to support the offender in meeting the basic needs identified in the pre-release assessment. This information shall include, but is not limited to: contact names, phone numbers, and addresses of referrals and resources.

(j) "Evidence-based practices" means supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism.

(k) "Facility" or "institution" means any facility for the custody, care, treatment and study of offenders which is under the supervision and control of the department.

(*l*) "Juvenile," "minor" or "youthful" means a person less than seventeen (17) years of age.

(m) "Offender" means any person convicted of a crime or offense under the laws and ordinances of the state and its political subdivisions.

(n) "Pre-release assessment" means a determination of an offender's ability to attend to basic needs, including, but not limited to, transportation, clothing and food, financial resources, personal identification documents, housing, employment, education, and health care, following release.

(o) "Special meetings" means those meetings called by the chairman with at least twenty-four (24) hours' notice or a unanimous waiver of notice.

(p) "Supervision plan" means a plan developed by the community corrections department to manage offenders on probation and parole in a way that reduces the likelihood they will commit a new criminal offense or violate the terms of supervision and that increases the likelihood of obtaining stable housing, employment and skills necessary to sustain positive conduct.

(q) "Technical violation" means an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer.

(r) "Transitional reentry center" means a state-operated or state-contracted facility used to house offenders leaving the physical custody of the Department of Corrections on parole, probation or post-release supervision who are in need of temporary housing and services that reduce their risk to reoffend.

(s) "Unit of local government" means a county, city, town, village or other general purpose political subdivision of the state.

(t) "Risk and needs assessment" means the determination of a person's risk to reoffend using an actuarial assessment tool validated on Mississippi corrections populations and the needs that, when addressed, reduce the risk to reoffend.

SOURCES: Laws, 1976, ch. 440, § 3; reenacted, Laws, 1981, ch. 465, § 91; reenacted, Laws, 1984, ch. 471, § 101; reenacted, Laws, 1986, ch. 413, § 101;

Laws, 1994, 1st Ex Sess, ch. 25, § 2; Laws, 2014, ch. 457, § 47, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (c), (f), (i), (j), (n), (p), (q), (r), and (t) and redesignated the remaining subsections accordingly.

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date.

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (¼) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c)(i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole. In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g)(i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release, shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth (¼) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in paragraph (i) of this subsection, a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this paragraph of this subsection if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;

2. The inmate is sentenced for a crime of violence under Section 97-3-2;

3. The inmate is sentenced for an offense that specifically prohibits parole release;

4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);

5. The inmate is sentenced for a sex crime; or

6. The inmate has not served one-fourth (¼) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph (1)(a) of this section, any nonviolent offender who has served twenty-five percent (25%) or more of his sentence may be paroled if the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge, recommends parole to the Parole Board and the Parole Board approves.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-fourth (¼) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job training program that is part of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

SOURCES: Codes, 1942, § 4004-03; Laws, 1944, ch. 334, § 2; Laws, 1946, ch. 486, § 2; Laws, 1950, ch. 524, § 4; Laws, 1958, ch. 233, § 2; Laws, 1964, ch. 366; Laws, 1976, ch. 440, § 79; Laws, 1976, ch. 470, § 5; Laws, 1980, ch. 511; reenacted, Laws, 1981, ch. 465, § 92; Laws, 1982, ch. 431, § 1; reenacted, Laws, 1984, ch. 471, § 102; Laws, 1985, ch. 499, § 16; Laws, 1985, ch. 531, § 3; reenacted and amended, Laws, 1986, ch. 413, § 102; Laws, 1986, ch. 435, § 1; Laws, 1989, 1st Ex Sess, ch. 3, § 4; Laws, 1993, ch. 443, § 1; Laws, 1994, ch. 566, § 2; Laws, 1994 Ex Sess, ch. 25, § 5; Laws, 1995, ch. 575, § 2; Laws, 1995, ch. 596, § 3; Laws, 2001, ch. 393, § 11; Laws, 2002, ch. 413, § 1; Laws, 2004, ch. 407, § 1; Laws, 2004, ch. 520, § 1; Laws, 2004, ch. 569, § 1; Laws, 2005, ch. 503, § 1; Laws, 2008, ch. 438, § 1; Laws, 2010, ch. 536, § 4; Laws, 2014, ch. 457, § 40, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted (1)(c) and former (1)(g) and redesignated the remaining subsections accordingly; in present (1)(c)(ii) and (1)(f), added a sentence to the end of each subsection; and added present (1)(g); in (2), deleted "; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section." from the end of the subsection; in (3), substituted "The parole hearing ... by the court." for "Such tentative parole hearing date shall be calculated by a formula taking into account the

offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled."; in (4), added "that are part of his or her parole case plan" to the end of the first sentence; inserted "that is part of the case plan" following "and job training program" in the second sentence; and substituted "in jeopardy of noncompliance with the case plan and may be denied parole" for "ineligible for parole" at the end of the second sentence.

JUDICIAL DECISIONS

1. In general; construction.
2. Constitutionality.
8. Miscellaneous.
9. Ineffective assistance of counsel.
10. Sex offenders.

1. In general; construction.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of a capital offense as defined in Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

Miss. Code Ann. § 47-7-3(1)(g) does not abolish parole. It applies only to the internal operating procedures of the Department of Corrections and the prisons and does not affect a judge's sentencing prerogative under the criminal statutes. Parker v. State, 30 So. 3d 1222 (Miss. 2010).

2. Constitutionality.

Based on Miller v. Alabama, 132 S. Ct. 2445 (2012), Parker v. State, 119 So. 3d 987 (Miss. 2013), and Jones v. State, 122 So. 3d 698 (Miss. 2013), an inmate who was 17 years old at the time he was involved in the robbery that led to his capital murder guilty plea and a sentence of life in prison without eligibility for parole was entitled to a new sentencing hearing to consider a sentence that would allow parole. Thomas v. State, 130 So. 3d 157 (Miss. Ct. App. 2014).

Trial court properly dismissed appellant's suit alleging the Mississippi Parole Board's denial of his parole was racially motivated and biased, as he did not present evidence that established a violation of his equal-protection rights by the Board in its application of the parole statutes based on his suspect classification. Wilde v. Miss. Parole Bd., — So. 3d —, 2013 Miss. App. LEXIS 780 (Miss. Ct. App. Nov. 19, 2013).

This section does not violate the Miller mandate so long as the sentencing authority accounts for characteristics and circumstances unique to juveniles. Jones v. State, 122 So. 3d 698 (Miss. 2013).

As defendant was 15 at the time of the murder and was statutorily ineligible for parole, and as Miller v. Alabama, 2012 U.S. LEXIS 4873, was decided while his appeal was pending, his life sentence was vacated and the case was remanded so the trial court could consider the Miller factors before determining sentence. Parker v. State, 119 So. 3d 987 (Miss. 2013).

Miss. Code Ann. § 47-7-3(1)(h) can constitutionally be applied to juveniles provided that the sentencing authority considers the factors of Miller v. Alabama, 2012 U.S. LEXIS 4873, in imposing the sentence. Parker v. State, 119 So. 3d 987 (Miss. 2013).

Trial court did not err in dismissing an inmate's complaint against the State seeking an interpretation of Miss. Code Ann. §§ 47-7-3 and 47-7-5 and claiming that the statutes were unconstitutional because he trial court lacked jurisdiction

to consider the inmate's claims; the inmate's concerns failed to state a constitutional claim sufficient for the trial court to assert jurisdiction. Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

8. Miscellaneous.

Trial court did not err in dismissing appellant's motion for post-conviction relief because no evidence was presented that appellant was misinformed during his sentencing hearing; under Miss. Code Ann. § 47-7-3(1)(h) appellant was not eligible for parole, and the trial court stated repeatedly at the sentencing hearing that the only sentence that could be imposed was life imprisonment. Collier v. State, 112 So. 3d 1088 (Miss. Ct. App. 2013).

Contrary to an inmate's assertions, the 2008 amendment of Miss. Code Ann. § 47-7-3(1)(g) (now § 47-7-3(1)(h)) did not provide the inmate with the possibility of being eligible for parole; the inmate had been convicted of armed robbery after October 1, 1994, and thus, he was ineligible for parole under § 47-7-3(1)(d)(ii). Brown v. State, 54 So. 3d 882 (Miss. Ct. App. 2011).

9. Ineffective assistance of counsel.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition, the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. Higginbotham v. State, 114 So. 3d 9 (Miss. Ct. App. 2012), writ of certiorari denied by 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

10. Sex offenders.

Defendant's sentence of thirty-five years in prison, with thirty years to serve and five years suspended, followed by five years' supervised probation, without the possibility of parole, was permissible under Miss. Code Ann. § 47-7-3(1)(b), although Miss. Code Ann. § 97-3-101(3) did not expressly authorize day-for-day sentences and parole restrictions. Petty v. State, 118 So. 3d 659 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

ALR. Defendant's Right to Credit for Time Spent in Halfway House, Rehabilitation Center, or Similar Restrictive Environment as Condition of Pretrial Release. 46 A.L.R.6th 63.

§ 47-7-3.1. Case plan for parole-eligible inmates; purpose; components.

(1) In consultation with the Parole Board, the department shall develop a case plan for all parole eligible inmates to guide an inmate's rehabilitation while in the department's custody and to reduce the likelihood of recidivism after release.

(2) Within ninety (90) days of admission, the department shall complete a case plan on all inmates which shall include, but not limited to:

(a) Programming and treatment requirements based on the results of a risk and needs assessment;

(b) Any programming or treatment requirements contained in the sentencing order; and

(c) General behavior requirements in accordance with the rules and policies of the department.

(3) The department shall provide the inmate with a written copy of the case plan and the inmate's caseworker shall explain the conditions set forth in the case plan.

(a) Within ninety (90) days of admission, the caseworker shall notify the inmate of their parole eligibility date as calculated in accordance with Section 47-7-3(3);

(b) At the time a parole-eligible inmate receives the case plan, the department shall send the case plan to the Parole Board for approval.

(4) The department shall ensure that the case plan is achievable prior to inmate's parole eligibility date.

(5) The caseworker shall meet with the inmate every eight (8) weeks from the date the offender received the case plan to review the inmate's case plan progress.

(6) Every four (4) months the department shall electronically submit a progress report on each parole-eligible inmate's case plan to the Parole Board. The board may meet to review an inmate's case plan and may provide written input to the caseworker on the inmate's progress toward completion of the case plan.

(7) The Parole Board shall provide semiannually to the Oversight Task Force the number of parole hearings held, the number of prisoners released to parole without a hearing and the number of parolees released after a hearing.

SOURCES: Laws, 2014, ch. 457, § 43, eff from and after July 1, 2014.

Cross References — Oversight Task Force, see § 47-5-6.
Case plan for parole-eligible inmates, see § 47-7-3.1.

§ 47-7-3.2. Minimum time offenders convicted of crime of violence must serve before release; minimum percentage of other sentences offenders must serve before release.

(1) Notwithstanding Sections 47-5-138, 47-5-139, 47-5-138.1 or 47-5-142, no person convicted of a criminal offense on or after July 1, 2014, shall be released by the department until he or she has served no less than fifty percent (50%) of a sentence for a crime of violence pursuant to Section 97-3-2 or twenty-five percent (25%) of any other sentence imposed by the court.

(2) This section shall not apply to:

(a) Offenders sentenced to life imprisonment;

(b) Offenders convicted as habitual offenders pursuant to Sections 99-19-81 through 99-19-87;

(c) Offenders serving a sentence for a sex offense; or

(d) Offenders serving a sentence for trafficking pursuant to Section 41-29-139(f).

SOURCES: Laws, 2014, ch. 457, § 42, eff from and after July 1, 2014.

§ 47-7-4. Conditional medical release of prisoners; criteria; supervision; revocation.

The commissioner and the medical director of the department may place an offender who has served not less than one (1) year of his or her sentence, except an offender convicted of a sex crime, on conditional medical release. However, a nonviolent offender who is bedridden may be placed on conditional medical release regardless of the time served on his or her sentence. Upon the release of a nonviolent offender who is bedridden, the state shall not be responsible or liable for any medical costs that may be incurred if such costs are acquired after the offender is no longer incarcerated due to his or her placement on conditional medical release. The commissioner shall not place an offender on conditional medical release unless the medical director of the department certifies to the commissioner that (a) the offender is suffering from a significant permanent physical medical condition with no possibility of recovery; (b) that his or her further incarceration will serve no rehabilitative purposes; and (c) that the state would incur unreasonable expenses as a result of his or her continued incarceration. Any offender placed on conditional medical release shall be supervised by the Division of Community Corrections of the department for the remainder of his or her sentence. An offender's conditional medical release may be revoked and the offender returned and placed in actual custody of the department if the offender violates an order or condition of his or her conditional medical release. An offender who is no longer bedridden shall be returned and placed in the actual custody of the department.

SOURCES: Laws, 2004, ch. 426, § 1; Laws, 2008, ch. 365, § 1; Laws, 2012, ch. 545, § 1, eff from and after passage (approved May 22, 2012.)

Amendment Notes — The 2012 amendment, substituted "bedridden" for "terminally ill" in the second and third sentences, and added the last sentence.

§ 47-7-5. State Parole Board created; membership; requirements; vacancies; expenses; immunity; budget; responsibilities to offenders; electronic monitoring program; central registry of paroled inmates; minimum vote required to grant parole to inmate convicted of capital murder or sex crime [Repealed effective July 1, 2018].

(1) The State Parole Board, created under former Section 47-7-5, is hereby created, continued and reconstituted and shall be composed of five (5) members. The Governor shall appoint the members with the advice and consent of the Senate. All terms shall be at the will and pleasure of the Governor. Any vacancy shall be filled by the Governor, with the advice and consent of the Senate. The Governor shall appoint a chairman of the board.

(2) Any person who is appointed to serve on the board shall possess at least a bachelor's degree or a high school diploma and four (4) years' work experience. Each member shall devote his full time to the duties of his office and shall not engage in any other business or profession or hold any other public office. A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38. Each member shall keep such hours and workdays as required of full-time state employees under Section 25-1-98. Individuals shall be appointed to serve on the board without reference to their political affiliations. Each board member, including the chairman, may be reimbursed for actual and necessary expenses as authorized by Section 25-3-41. Each member of the board shall complete annual training developed based on guidance from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association. Each first-time appointee of the board shall, within sixty (60) days of appointment, or as soon as practical, complete training for first-time Parole Board members developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.

(3) The board shall have exclusive responsibility for the granting of parole as provided by Sections 47-7-3 and 47-7-17 and shall have exclusive authority for revocation of the same. The board shall have exclusive responsibility for investigating clemency recommendations upon request of the Governor.

(4) The board, its members and staff, shall be immune from civil liability for any official acts taken in good faith and in exercise of the board's legitimate governmental authority.

(5) The budget of the board shall be funded through a separate line item within the general appropriation bill for the support and maintenance of the department. Employees of the department which are employed by or assigned to the board shall work under the guidance and supervision of the board. There shall be an executive secretary to the board who shall be responsible for all administrative and general accounting duties related to the board. The executive secretary shall keep and preserve all records and papers pertaining to the board.

(6) The board shall have no authority or responsibility for supervision of offenders granted a release for any reason, including, but not limited to, probation, parole or executive clemency or other offenders requiring the same through interstate compact agreements. The supervision shall be provided exclusively by the staff of the Division of Community Corrections of the department.

(7)(a) The Parole Board is authorized to select and place offenders in an electronic monitoring program under the conditions and criteria imposed by the Parole Board. The conditions, restrictions and requirements of Section 47-7-17 and Sections 47-5-1001 through 47-5-1015 shall apply to the Parole Board and any offender placed in an electronic monitoring program by the Parole Board.

(b) Any offender placed in an electronic monitoring program under this subsection shall pay the program fee provided in Section 47-5-1013. The

program fees shall be deposited in the special fund created in Section 47-5-1007.

(c) The department shall have absolute immunity from liability for any injury resulting from a determination by the Parole Board that an offender be placed in an electronic monitoring program.

(8)(a) The Parole Board shall maintain a central registry of paroled inmates. The Parole Board shall place the following information on the registry: name, address, photograph, crime for which paroled, the date of the end of parole or flat-time date and other information deemed necessary. The Parole Board shall immediately remove information on a parolee at the end of his parole or flat-time date.

(b) When a person is placed on parole, the Parole Board shall inform the parolee of the duty to report to the parole officer any change in address ten (10) days before changing address.

(c) The Parole Board shall utilize an Internet website or other electronic means to release or publish the information.

(d) Records maintained on the registry shall be open to law enforcement agencies and the public and shall be available no later than July 1, 2003.

(9) An affirmative vote of at least four (4) members of the Parole Board shall be required to grant parole to an inmate convicted of capital murder or a sex crime.

(10) This section shall stand repealed on July 1, 2018.

SOURCES: Codes, 1942, § 4004-01; Laws, 1942, ch. 283; Laws, 1944, ch. 334, § 3; Laws, 1950, ch. 524, §§ 2, 3; Laws, 1956, ch. 262, § 2; Laws, 1960, ch. 272; Laws, 1968, ch. 362, § 1; Laws, 1976, ch. 440, § 80; Laws, 1978, ch. 520, § 13; Laws, 1980, ch. 560, § 21; reenacted, Laws, 1981, ch. 465, § 93; reenacted, Laws, 1984, ch. 471, § 103; reenacted, Laws, 1986, ch. 413, § 103; Laws, 1989, 1st Ex Sess, ch. 3, § 1; Laws, 1992, ch. 346, § 1; Laws, 1993, ch. 575, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 25, § 1; amended, Laws, 1995, ch. 596, § 1; Laws, 1997, ch. 602, § 2; Laws, 2000, ch. 612, § 1; Laws, 2002, ch. 560, § 1; Laws, 2004, ch. 569, § 2; Laws, 2005, ch. 485, § 1; Laws, 2006, ch. 570, § 1; Laws, 2007, ch. 597, § 1; Laws, 2009, ch. 513, § 1; Laws, 2012, ch. 320, § 1; Laws, 2014, ch. 457, § 52, eff from and after July 1, 2014.

Amendment Notes — The 2012 amendment extended the repealer provision in (10) from "July 1, 2012" to "July 1 2014."

The 2014 amendment added two additional sentences at the end of (2); and extended the repealer provision from "July 1, 2014" to "July 1, 2018" in (10).

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

JUDICIAL DECISIONS

1. In general.

Trial court did not err in dismissing an inmate's complaint against the State seeking an interpretation of Miss. Code Ann. §§ 47-7-3 and 47-7-5 and claiming that the statutes were unconstitutional because he trial court lacked jurisdiction to consider the inmate's claims; the inmate's concerns failed to state a constitutional claim sufficient for the trial court to

assert jurisdiction, and the Parole Board was in compliance with Miss. Code Ann. § 47-7-5, Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

§ 47-7-6. Parole Board to collect certain information and report semiannually to Oversight Task Force.

(1) The Parole Board, with the assistance of the Department of Corrections, shall collect the following information:

(a) The number of offenders supervised on parole;

(b) The number of offenders released on parole;

(c) The number of parole hearings held;

(d) The parole grant rate for parolees released with and without a hearing;

(e) The average length of time offenders spend on parole;

(f) The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in a technical violation center;

(g) The number and percentage of parolees revoked for a technical violation and returned for a term of imprisonment in another type of Department of Corrections' facility;

(h) The number and percentage of parolees who are convicted of a new offense and returned for a term of imprisonment on their current crime as well as the new crime;

(i) The number of parolees held on a violation in county jail awaiting a revocation hearing; and

(j) The average length of stay in a county jail for parolees awaiting a revocation hearing.

(2) The Parole Board shall semiannually report information required in subsection (1) to the Oversight Task Force, and upon request, shall report such information to the PEER Committee.

SOURCES: Laws, 2014, ch. 457, § 67, effective from and after July 1, 2014.

Editor's Note — A former § 47-7-6. (Laws, 1989, 1st Ex Sess, ch. 3, § 2, eff from and after May 1, 1989; Repealed by Laws of 2008, ch. 438, § 2, effective from and after passage April 7, 2008).

§ 47-7-9. General powers and duties of personnel of Division of Community Corrections as field supervisors and presentence investigators.

(1) The circuit judges and county judges in the districts to which Division of Community Corrections personnel have been assigned shall have the power to request of the department transfer or removal of the division personnel from their court.

(2)(a) Division personnel shall investigate all cases referred to them for investigation by the board, the division or by any court in which they are authorized to serve. They shall furnish to each person released under their

supervision a written statement of the conditions of probation, parole, earned-release supervision, post-release supervision or suspension and shall instruct the person regarding the same. They shall administer a risk and needs assessment on each person under their supervision to measure criminal risk factors and individual needs. They shall use the results of the risk and needs assessment to guide supervision responses consistent with evidence-based practices as to the level of supervision and the practices used to reduce recidivism. They shall develop a supervision plan for each person assessed as moderate to high risk to reoffend. They shall keep informed concerning the conduct and conditions of persons under their supervision and use all suitable methods that are consistent with evidence-based practices to aid and encourage them and to bring about improvements in their conduct and condition and to reduce the risk of recidivism. They shall keep detailed records of their work and shall make such reports in writing as the court or the board may require.

(b) Division personnel shall complete annual training on evidence-based practices and criminal risk factors, as well as instructions on how to target these factors to reduce recidivism.

(c) The division personnel duly assigned to court districts are hereby vested with all the powers of police officers or sheriffs to make arrests or perform any other duties required of policemen or sheriffs which may be incident to the division personnel responsibilities. All probation and parole officers hired on or after July 1, 1994, will be placed in the Law Enforcement Officers Training Program and will be required to meet the standards outlined by that program.

(d) It is the intention of the Legislature that insofar as practicable the case load of each division personnel supervising offenders in the community (hereinafter field supervisor) shall not exceed the number of cases that may be adequately handled.

(3)(a) Division personnel shall be provided to perform investigation for the court as provided in this subsection. Division personnel shall conduct presentence investigations on all persons convicted of a felony in any circuit court of the state, prior to sentencing and at the request of the circuit court judge of the court of conviction. The presentence evaluation report shall consist of a complete record of the offender's criminal history, educational level, employment history, psychological condition and such other information as the department or judge may deem necessary. Division personnel shall also prepare written victim impact statements at the request of the sentencing judge as provided in Section 99-19-157.

(b) In order that offenders in the custody of the department on July 1, 1976, may benefit from the kind of evaluations authorized in this section, an evaluation report to consist of the information required hereinabove, supplemented by an examination of an offender's record while in custody, shall be compiled by the division upon all offenders in the custody of the department on July 1, 1976. After a study of such reports by the State Parole Board those cases which the board believes would merit some type of executive clemency

shall be submitted by the board to the Governor with its recommendation for the appropriate executive action.

(c) The department is authorized to accept gifts, grants and subsidies to conduct this activity.

SOURCES: Codes, 1942, § 4004-09; Laws, 1944, ch. 334, § 7; Laws, 1950, ch. 524, § 10; Laws, 1954, Ex. ch. 23, § 1; Laws, 1956, ch. 262, § 4; Laws, 1976, ch. 440, § 81; reenacted, Laws, 1981, ch. 465, § 94; reenacted, Laws, 1984, ch. 471, § 104; reenacted, Laws, 1986, ch. 413, § 104; Laws, 1987, ch. 433, § 7; Laws, 1994, ch. 516, § 1; Laws, 1995, ch. 596, § 6; Laws, 2002, ch. 624, § 5; Laws, 2014, ch. 457, § 53, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (2)(a), substituted "the person" for "him" at the end of the second sentence; added the third, fourth, and fifth sentences; and inserted "that are consistent with evidence-based practices" and "and to reduce the risk of recidivism" to the second from last sentence; added (2)(b) and redesignated the remaining subsections accordingly.

§ 47-7-17. Examination of offender's record; eligibility for parole.

Within one (1) year after his admission and at such intervals thereafter as it may determine, the board shall secure and consider all pertinent information regarding each offender, except any under sentence of death or otherwise ineligible for parole, including the circumstances of his offense, his previous social history, his previous criminal record, including any records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, his conduct, employment and attitude while in the custody of the department, the case plan created to prepare the offender for parole, and the reports of such physical and mental examinations as have been made. The board shall furnish at least three (3) months' written notice to each such offender of the date on which he is eligible for parole.

Before ruling on the application for parole of any offender, the board may require a parole-eligible offender to have a hearing as required in this chapter before the board and to be interviewed. The hearing shall be held no later than thirty (30) days prior to the month of eligibility. No application for parole of a person convicted of a capital offense shall be considered by the board unless and until notice of the filing of such application shall have been published at least once a week for two (2) weeks in a newspaper published in or having general circulation in the county in which the crime was committed. The board shall, within thirty (30) days prior to the scheduled hearing, also give notice of the filing of the application for parole to the victim of the offense for which the prisoner is incarcerated and being considered for parole or, in case the offense be homicide, a designee of the immediate family of the victim, provided the victim or designated family member has furnished in writing a current address to the board for such purpose. Parole release shall, at the hearing, be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. An offender shall be placed on parole only when arrangements have been made for his proper employment

or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. When the board determines that the offender will need transitional housing upon release in order to improve the likelihood of him or her becoming a law-abiding citizen, the board may parole the offender with the condition that the inmate spends no more than six (6) months in a transitional reentry center. At least fifteen (15) days prior to the release of an offender on parole, the director of records of the department shall give the written notice which is required pursuant to Section 47-5-177. Every offender while on parole shall remain in the legal custody of the department from which he was released and shall be amenable to the orders of the board. Upon determination by the board that an offender is eligible for release by parole, notice shall also be given within at least fifteen (15) days before release, by the board to the victim of the offense or the victim's family member, as indicated above, regarding the date when the offender's release shall occur, provided a current address of the victim or the victim's family member has been furnished in writing to the board for such purpose.

Failure to provide notice to the victim or the victim's family member of the filing of the application for parole or of any decision made by the board regarding parole shall not constitute grounds for vacating an otherwise lawful parole determination nor shall it create any right or liability, civilly or criminally, against the board or any member thereof.

A letter of protest against granting an offender parole shall not be treated as the conclusive and only reason for not granting parole.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of offenders for parole, the conduct of parole hearings, or conditions to be imposed upon parolees, including a condition that the parolee submit, as provided in Section 47-5-601 to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States. The board shall have the authority to adopt rules related to the placement of certain offenders on unsupervised parole and for the operation of transitional reentry centers. However, in no case shall an offender be placed on unsupervised parole before he has served a minimum of fifty percent (50%) of the period of supervised parole.

SOURCES: Codes, 1942, § 4004-08; Laws, 1950, ch. 524, § 9; Laws, 1972, ch. 335, § 1; Laws, 1976, ch. 440, § 8; Laws, 1981, ch. 382, § 1; reenacted, Laws, 1981, ch. 465, § 98; Laws, 1983, ch. 375, § 2, ch. 435, § 4; reenacted, Laws, 1984, ch. 471, § 108; Laws, 1985, ch. 444, § 2; reenacted, Laws, 1986, ch. 413, § 108; Laws, 1986, ch. 422, § 3; Laws, 1986, ch. 424, § 1; Laws, 1989, 1st Ex Sess ch. 3, § 7; Laws, 1990, ch. 399, § 2; Laws, 1994, 1st Ex Sess, ch. 25, § 3; Laws, 2014, ch. 457, § 45, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in the first undesignated paragraph, inserted "the case plan created to prepare the offender for parole," near the end of the first sentence; in the second undesignated paragraph, in the first sentence, substituted "require a parole-eligible" for "have the" and "to have a hearing as required in this chapter before the board and to be interviewed" for "appear before it and interview

him"; in the second sentence, deleted "in order for the department to address any special conditions required by the board" from the end, and substituted "no later than thirty (30) days prior" for "two (2) months," in the fourth sentence, inserted "within thirty (30) days prior to the scheduled hearing,"; in the fifth sentence, deleted "A" at the beginning and inserted "release" following "Parole" and "at the hearing," preceding "be ordered only for the best"; added a seventh sentence; and at the beginning of the eighth sentence, substituted "At least fifteen (15) days" for "Within forty-eight (48) hours"; deleted the second to last sentence, which read: "The board, upon rejecting the application for parole of any offender, shall within thirty (30) days following such rejection furnish that offender in general terms the reasons therefor in writing"; and inserted "within at least fifteen (15) days before release," near the beginning of the last sentence; in the last undesignated paragraph, in the second to last sentence, substituted "related to the placement of" for "permitting," deleted "to be placed" following "certain offenders" and added "and for the operation of transitional reentry centers" to the end; and in the last sentence, substituted "fifty percent (50%) of the period" for "three (3) years."

Cross References — Case plan for parole-eligible inmates, see § 47-7-3.1.

JUDICIAL DECISIONS

5. Miscellaneous.

Trial court did not err by denying an inmate's motion for a preliminary injunction because nothing in the record supported the inmate's claim that the Mississippi State Parole Board arbitrarily denied him parole in violation of any Fourteenth Amendment right; the Parole Board denied the inmate's parole based upon the serious nature of the offense, the number of offenses committed, the inmate's police record, community opposition, and insufficient time served, and because the reasons stated by the Parole Board for denying the inmate's parole were areas that the Parole Board had authority to consider under Miss. Code Ann. § 47-7-17, those categories could not be viewed as arbitrary and capricious. Rochell v. State, 36 So. 3d 479 (Miss. Ct. App. 2010).

§ 47-7-18. Conditions for release of parole-eligible inmates without hearing; hearing required under certain circumstances.

(1) Each inmate eligible for parole pursuant to Section 47-7-3, shall be released from incarceration to parole supervision on the inmate's parole eligibility date, without a hearing before the board, if:

(a) The inmate has met the requirements of the parole case plan established pursuant to Section 47-7-3.1;

(b) A victim of the offense has not requested the board conduct a hearing;

(c) The inmate has not received a serious or major violation report within the past six (6) months;

(d) The inmate has agreed to the conditions of supervision; and

(e) The inmate has a discharge plan approved by the board.

(2) At least thirty (30) days prior to an inmate's parole eligibility date, the department shall notify the board in writing of the inmate's compliance or noncompliance with the case plan. If an inmate fails to meet a requirement of the case plan, prior to the parole eligibility date, he or she shall have a hearing

before the board to determine if completion of the case plan can occur while in the community.

(3) Any inmate for whom there is insufficient information for the department to determine compliance with the case plan shall have a hearing with the board.

(4) A hearing shall be held with the board if requested by the victim following notification of the inmate's parole release date pursuant to Section 47-7-17.

(5) A hearing shall be held by the board if a law enforcement official from the community to which the inmate will return contacts the board or the department and requests a hearing to consider information relevant to public safety risks posed by the inmate if paroled at the initial parole eligibility date. The law enforcement official shall submit an explanation documenting these concerns for the board to consider.

(6) If a parole hearing is held, the board may determine the inmate has sufficiently complied with the case plan or that the incomplete case plan is not the fault of the inmate and that granting parole is not incompatible with public safety, the board may then parole the inmate with appropriate conditions. If the board determines that the inmate has sufficiently complied with the case plan but the discharge plan indicates that the inmate does not have appropriate housing immediately upon release, the board may parole the inmate to a transitional reentry center with the condition that the inmate spends no more than six (6) months in the center. If the board determines that the inmate has not substantively complied with the requirement(s) of the case plan it may deny parole. If the board denies parole, the board may schedule a subsequent parole hearing and, if a new date is scheduled, the board shall identify the corrective action the inmate will need to take in order to be granted parole. Any inmate not released at the time of the inmate's initial parole date shall have a parole hearing at least every year.

SOURCES: Laws, 2014, ch. 457, § 44, effective from and after July 1, 2014.

Editor's Note — Former Section 47-7-18 required notification of certain law enforcement agencies and the crime victim or victim's family of the parole of a prisoner.

Repealed by Laws of 1990, ch. 399, § 3, eff from and after July 1, 1990. [Laws, 1989, 1st Ex Sess, ch. 3, § 3]

§ 47-7-27. Return of violator of parole or earned release supervision; arrest of offender; hearing; revocation of parole; imprisonment for technical violation to be served in technical violation center.

(1) The board may, at any time and upon a showing of probable violation of parole, issue a warrant for the return of any paroled offender to the custody of the department. The warrant shall authorize all persons named therein to return the paroled offender to actual custody of the department from which he was paroled.

(2) Any field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest by giving him a written statement setting forth that the offender has, in the judgment of that field supervisor, violated the conditions of his parole or earned-release supervision. The written statement delivered with the offender by the arresting officer to the official in charge of the department facility from which the offender was released or other place of detention designated by the department shall be sufficient warrant for the detention of the offender.

(3) The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. The field supervisor shall at once notify the board or department of the arrest and detention of the offender and shall submit a written report showing in what manner the offender has violated the conditions of parole or earned-release supervision. An offender for whose return a warrant has been issued by the board shall, after the issuance of the warrant, be deemed a fugitive from justice.

(4) Whenever an offender is arrested on a warrant for an alleged violation of parole as herein provided, the board shall hold an informal preliminary hearing within seventy-two (72) hours to determine whether there is reasonable cause to believe the person has violated a condition of parole. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically.

(5) The right of the State of Mississippi to extradite persons and return fugitives from justice, from other states to this state, shall not be impaired by this chapter and shall remain in full force and effect. An offender convicted of a felony committed while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the board. If an offender is on parole and the offender is convicted of a felony for a crime committed prior to the offender being placed on parole, whether in the State of Mississippi or another state, the offender may have his parole revoked upon presentment of a certified copy of the commitment order to the board.

(6)(a) The board shall hold a hearing for any parolee who is detained as a result of a warrant or a violation report within twenty-one (21) days of the parolee's admission to detention. The board may, in its discretion, terminate the parole or modify the terms and conditions thereof. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred and eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the

sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the board does not hold a hearing or does not take action on the violation within the twenty-one-day time frame in paragraph (a) of this subsection, the parolee shall be released from detention and shall return to parole status. The board may subsequently hold a hearing and may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) For a parolee charged with a technical violation who has not been detained awaiting the revocation hearing, the board may hold a hearing within a reasonable time. The board may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for a technical violation the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(7) Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the revocation hearing is not held within the thirty (30) days of the issuance of the warrant.

(8) The chairman and each member of the board and the designated parole revocation hearing officer may, in the discharge of their duties, administer oaths, summon and examine witnesses, and take other steps as may be necessary to ascertain the truth of any matter about which they have the right to inquire.

(9) The board shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of parole, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of

ninety-day sentences in a technical violation center issued by the board, the number of one-hundred-twenty-day sentences in a technical violation center issued by the board, the number of one-hundred-eighty-day sentences issued by the board, and the number and average length of the suspended sentences imposed by the board in response to a violation.

SOURCES: Codes, 1942, § 4004-13; Laws, 1944, ch. 334, § 11; Laws, 1950, ch. 524, § 14; Laws, 1956, ch. 262, § 6; Laws, 1976, ch. 440, § 86; reenacted, Laws, 1981, ch. 465, § 103; reenacted, Laws, 1984, ch. 471, § 113; Laws, 1986, ch. 357, § 1; reenacted, Laws, 1986, ch. 413, § 113; Laws, 1989, ch. 306, § 1; Laws, 1995, ch. 596, § 7; Laws, 2010, ch. 470, § 1; Laws, 2012, ch. 488, § 1; Laws, 2014, ch. 457, § 56, eff from and after July 1, 2014.

Amendment Notes — The 2012 amendment rewrote (1), (5), and (6); deleted "law now in effect concerning the" preceding "right of the State of Mississippi" at the beginning of the first sentence in (4); and made minor stylistic changes.

The 2014 amendment deleted the last sentence from (1) regarding the offender remaining incarcerated pending hearing; added (4), (6), (7), and (9) and redesignated the remaining subsections accordingly.

Cross References — Oversight Task Force, see § 47-5-6.

Technical violation centers, see § 47-7-38.1.

§ 47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.

(1) When it appears to the satisfaction of any circuit court or county court in the State of Mississippi having original jurisdiction over criminal actions, or to the judge thereof, that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, such court, in termtime or in vacation, shall have the power, after conviction or a plea of guilty, except in a case where a death sentence or life imprisonment is the maximum penalty which may be imposed, to suspend the imposition or execution of sentence, and place the defendant on probation as herein provided, except that the court shall not suspend the execution of a sentence of imprisonment after the defendant shall have begun to serve such sentence. In placing any defendant on probation, the court, or judge, shall direct that such defendant be under the supervision of the Department of Corrections.

(2) When any circuit or county court places an offender on probation, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender on probation. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender on probation.

(3) When any circuit court or county court places a person on probation in accordance with the provisions of this section and that person is ordered to make any payments to his family, if any member of his family whom he is ordered to support is receiving public assistance through the State Department of Human Services, the court shall order him to make such payments to

the county welfare officer of the county rendering public assistance to his family, for the sole use and benefit of said family.

SOURCES: Codes, 1942, § 4004-23; Laws, 1956, ch. 262, § 10; Laws, 1958, ch. 242; Laws, 1976, ch. 440, § 88; reenacted, Laws, 1981, ch. 465, § 106; reenacted, Laws, 1984, ch. 471, § 116; reenacted, Laws, 1986, ch. 413, § 116; Laws, 2000, ch. 622, § 2; Laws, 2014, ch. 457, § 10, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1), deleted "or where the defendant has been convicted of a felony on a previous occasion in any court or courts of the United States and of any state of territories thereof" following "is the maximum penalty which may be imposed"; and in (3), substituted "Human Services" for "Public Welfare."

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing "First Offenders" and "Innocent Persons," Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi,* Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

§ 47-7-33.1. Pre-release assessment and written discharge plan.

(1) The department shall create a discharge plan for any offender returning to the community, regardless of whether the person will discharge from the custody of the department, or is released on parole, pardon, or otherwise. At least ninety (90) days prior to an offender's earliest release date, the commissioner shall conduct a pre-release assessment and complete a written discharge plan based on the assessment results. The discharge plan for parole eligible offenders shall be sent to the parole board at least thirty (30) days prior to the offender's parole eligibility date for approval. The board may suggest changes to the plan that it deems necessary to ensure a successful transition.

(2) The pre-release assessment shall identify whether an inmate requires assistance obtaining the following basic needs upon release: transportation, clothing and food, financial resources, identification documents, housing, employment, education, health care and support systems. The discharge plan shall include information necessary to address these needs and the steps being taken by the department to assist in this process. Based on the findings of the assessment, the commissioner shall:

(a) Arrange transportation for inmates from the correctional facility to their release destination;

(b) Ensure inmates have clean, seasonally appropriate clothing, and provide inmates with a list of food providers and other basic resources immediately accessible upon release;

(c) Ensure inmates have a driver's license or a state-issued identification card that is not a Department of Corrections identification card;

(d) Assist inmates in identifying safe, affordable housing upon release. If accommodations are not available, determine whether temporary housing

is available for at least ten (10) days after release. If temporary housing is not available, the discharge plan shall reflect that satisfactory housing has not been established and the person may be a candidate for transitional reentry center placement;

(e) Refer inmates without secured employment to employment opportunities;

(f) Provide inmates with contact information of a health care facility/provider in the community in which they plan to reside;

(g) Notify family members of the release date and release plan, if inmate agrees; and

(h) Refer inmates to a community or a faith-based organization that can offer support within the first twenty-four (24) hours of release;

(3) A written discharge plan shall be provided to the offender and supervising probation officer or parole officer, if applicable.

(4) A discharge plan created for a parole-eligible offender shall also include supervision conditions and the intensity of supervision based on the assessed risk to recidivate and whether there is a need for transitional housing. The board shall approve discharge plans before an offender is released on parole pursuant to this chapter.

SOURCES: Laws, 2014, ch. 457, § 48, eff from and after July 1, 2014.

Cross References — Pre-release assessment and discharge plan defined, see § 47-7-2.

§ 47-7-34. Postrelease supervision program.

(1) When a court imposes a sentence upon a conviction for any felony committed after June 30, 1995, the court, in addition to any other punishment imposed if the other punishment includes a term of incarceration in a state or local correctional facility, may impose a term of post-release supervision. However, the total number of years of incarceration plus the total number of years of post-release supervision shall not exceed the maximum sentence authorized to be imposed by law for the felony committed. The defendant shall be placed under post-release supervision upon release from the term of incarceration. The period of supervision shall be established by the court.

(2) The period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by any terms and conditions as the court may establish. Failure to successfully abide by the terms and conditions shall be grounds to terminate the period of post-release supervision and to recommit the defendant to the correctional facility from which he was previously released. Procedures for termination and recommitment shall be conducted in the same manner as procedures for the revocation of probation and imposition of a suspended sentence as required pursuant to Section 47-7-37.

(3) Post-release supervision programs shall be operated through the probation and parole unit of the Division of Community Corrections of the

department. The maximum amount of time that the Mississippi Department of Corrections may supervise an offender on the post-release supervision program is five (5) years.

SOURCES: Laws, 1995, ch. 596, § 9; Laws, 2000, ch. 622, § 4; Laws, 2002, ch. 624, § 6; Laws, 2014, ch. 457, § 57, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added "as required pursuant to Section 47-7-37" to the end of (2)

JUDICIAL DECISIONS

2. Revocation.
5. Propriety of particular sentences.

2. Revocation.

Probationer failed to show that the trial court acted outside its authority in revoking the probationer's post-release supervision because the evidence showed that the probationer was on post-release supervision, instead of parole, which was under the exclusive authority of the trial court. Boone v. State, — So. 3d —, 2014 Miss. App. LEXIS 100 (Miss. Ct. App. Feb. 25, 2014).

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

5. Propriety of particular sentences.

Denial of post-conviction relief to an inmate was error as under Miss. Code Ann. § 47-7-34, the circuit court had lacked jurisdiction to extend the inmate's term of post-release supervision (PRS) beyond the three-year maximum authorized by Miss. Code Ann. § 41-29-139(b)(3), and therefore, the inmate's PRS had expired before the circuit court revoked the inmate's suspended sentence for violation of the terms of the extended PRS. Allen v. State, 62 So. 3d 450 (Miss. Ct. App. 2011).

§ 47-7-35. Terms and conditions of probation; court to determine; sex offender registry check required prior to placing offender on probation.

RESEARCH REFERENCES

ALR. Propriety of Requirement, as Condition of Probation, That Defendant Refrain from Use of Intoxicants. 46 A.L.R.6th 241.

§ 47-7-37. Period of probation; arrest, revocation and recommitment for violation of probation or postrelease supervision; hearing; revocation of probation for technical violation; imprisonment in technical violation center; certain restrictions on imposition of bail for persons required to register as sex offender.

(1) The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period

with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation may be fixed and/or extended by the court for so long as the duty to support such minor children exists. The time served on probation or post-release supervision may be reduced pursuant to Section 55 of this act.

(2) At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.

(4) If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family ties, length of residence in the community, employment history and mental condition; the offender or probationer's history and conduct during the probation or other supervised release and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

(5)(a) The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the

court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the offender is not detained as a result of the warrant, the court shall cause the probationer to be brought before it within a reasonable time and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) If the court does not hold a hearing or does not take action on the violation within the twenty-one-day period, the offender shall be released from detention and shall return to probation status. The court may subsequently hold a hearing and may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for a technical violation, the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical

violation center or a restitution center for up to one hundred and eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(d) For an offender charged with a technical violation who has not been detained awaiting the revocation hearing, the court may hold a hearing within a reasonable time. The court may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for a technical violation the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first technical violation and not to exceed one hundred twenty (120) days for the second technical violation. For the third technical violation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent technical violation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(6) If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Upon the revocation of probation or suspension of sentence of any offender, such offender shall be placed in the legal custody of the State Department of Corrections and shall be subject to the requirements thereof.

(7) Any probationer who removes himself from the State of Mississippi without permission of the court placing him on probation, or the court to which jurisdiction has been transferred, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that one is on probation shall be considered as any part of the time that he shall be sentenced to serve.

(8) The arresting officer, except when a probation and parole officer, shall be allowed the same fees as now provided by law for arrest on warrant, and such fees shall be taxed against the probationer and paid as now provided by law.

(9) The arrest, revocation and recommitment procedures of this section also apply to persons who are serving a period of post-release supervision imposed by the court.

(10) Unless good cause for the delay is established in the record of the proceeding, the probation revocation charge shall be dismissed if the revocation hearing is not held within thirty (30) days of the warrant being issued.

(11) The Department of Corrections shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of probation or post-release supervision, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the court, the number of one-hundred-twenty-day sentences in a technical violation center issued by the court, the number of one-hundred-eighty-day sentences issued by the court, and the number and average length of the suspended sentences imposed by the court in response to a violation.

SOURCES: Codes, 1942, § 4004-25; Laws, 1956, ch. 262, § 12; Laws, 1962, ch. 331; brought forward, Laws, 1981, ch. 465, § 108; reenacted, Laws, 1984, ch. 471, § 118; reenacted, Laws, 1986, ch. 413, § 118; Laws, 1990, ch. 331, § 1; Laws, 1992, ch. 395, § 1; Laws, 1995, ch. 596, § 11; Laws, 2006, ch. 566, § 6; Laws, 2014, ch. 457, § 58, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added present (3), (10), and (11) and redesignated former undesignated paragraphs as (1), (2), and (4) through (9); in present (1), added the last sentence; and rewrote present (5)(a).

Cross References — Oversight Task Force, see § 47-5-6.

Technical violation centers, see § 47-7-38.1.

JUDICIAL DECISIONS

4. Proceedings; right to counsel.
6. Propriety of particular sentences.

4. Proceedings; right to counsel.

Trial court was entitled to revoke a probationer's post-release supervision (PRS) based solely on the probationers admission to the violations of the terms and conditions of the probationer's PRS. Furthermore, because the case was not complex, the probationer would not have been entitled to appointed counsel even if the probationer had been informed that the probationer could request counsel Hall v. State, — So. 3d —, 2014 Miss. App. LEXIS 41 (Miss. Ct. App. Jan. 28, 2014).

6. Propriety of particular sentences.

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860 (Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

§ 47-7-38. Graduated sanctions as alternative to judicial modification or revocation of parole, probation or post-release supervision.

(1) The department shall have the authority to impose graduated sanctions as an alternative to judicial modification or revocation, as provided in Sections 47-7-27 and 47-7-37, for offenders on probation, parole, or post-release supervision who commit technical violations of the conditions of supervision as defined by Section 47-7-2.

(2) The commissioner shall develop a standardized graduated sanctions system, which shall include a grid to guide field officers in determining the suitable response to a technical violation. The commissioner shall promulgate rules and regulations for the development and application of the system of sanctions. Field officers shall be required to conform to the sanction grid developed.

(3) The system of sanctions shall include a list of sanctions for the most common types of violations. When determining the sanction to impose, the field officer shall take into account the offender's assessed risk level, previous violations and sanctions, and severity of the current and prior violations.

(4) Field officers shall notify the sentencing court when a probationer has committed a technical violation or the parole board when a parolee has committed a technical violation of the type of violation and the sanction imposed. When the technical violation is an arrest for a new criminal offense, the field officer shall notify the court within forty-eight (48) hours of becoming aware of the arrest.

(5) The graduated sanctions that the department may impose include, but shall not be limited to:

(a) Verbal warnings;

(b) Increased reporting;

(c) Increased drug and alcohol testing;

(d) Mandatory substance abuse treatment;

(e) Loss of earned-discharge credits; and

(f) Incarceration in a county jail for no more than two (2) days. Incarceration as a sanction shall not be used more than two (2) times per month for a total period incarcerated of no more than four (4) days.

(6) The system shall also define positive reinforcements that offenders will receive for compliance with conditions of supervision. These positive reinforcements shall include, but not limited to:

(a) Verbal recognition;

(b) Reduced reporting; and

(c) Credits for earned discharge which shall be awarded pursuant to Section 47-7-40.

(7) The Department of Corrections shall provide semiannually to the Oversight Task Force the number and percentage of offenders who have one or more violations during the year, the average number of violations per offender during the year and the total and average number of incarceration sanctions as defined in subsection (5) of this section imposed during the year.

SOURCES: Laws, 2014, ch. 457, § 54, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference is Section 54 of H.B. 585 (Chapter 457) codified as this section. The reference to "Section 70 of this act" in (6)(c) was changed to "Section 55 of this act," which has been codified as new Section 47-7-40. The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 47-7-38.1. Technical violation centers.

(1) The Department of Corrections shall establish technical violation centers to detain probation and parole violators revoked by the court or parole board.

(2) The department shall place an offender in a violation center for a technical violation as ordered by the board pursuant to Section 47-7-27 and the sentencing court pursuant to Section 47-7-37.

(3) The violation centers shall be equipped to address the underlying factors that led to the offender's violation as identified based on the results of a risk and needs assessment. At a minimum each violation center shall include substance abuse services shown to reduce recidivism and a reduction in the use of illicit substances or alcohol, education programs, employment preparation and training programs and behavioral programs.

(4) As required by Section 47-5-20(b), the department shall notify, by certified mail, each member of the board of supervisors of the county in which the violation center shall be located of the department's intent to convert an existing department facility to a technical violation center.

(5) The department shall establish rules and regulations for the implementation and operation of the technical violation centers.

(6) The Department of Corrections shall provide to the Oversight Task Force semiannually the average daily population of the technical violation centers, the number of admissions to the technical violation centers, and the average time served in the technical violation centers.

SOURCES: Laws, 2014, ch. 457, § 61, eff from and after July 1, 2014.

Editor's Note — Oversight Task Force, see § 47-5-6.

§ 47-7-40. Earned-discharge program; eligibility; accrual of earned-discharge credits.

(1) The commissioner shall establish rules and regulations for implementing the earned-discharge program that allows offenders on probation and parole to reduce the period of supervision for complying with conditions of probation. The department shall have the authority to award earned-discharge credits to all offenders placed on probation, parole, or post-release supervision who are in compliance with the terms and conditions of supervision. An offender serving a Mississippi sentence for an eligible offense in any jurisdic-

tion under the Interstate Compact for Adult Offender Supervision shall be eligible for earned-discharge credits under this section.

(2) For each full calendar month of compliance with the conditions of supervision, earned-discharge credits equal to the number of days in that month shall be deducted from the offender's sentence discharge date. Credits begin to accrue for eligible offenders after the first full calendar month of compliance supervision conditions. For the purposes of this section, an offender is deemed to be in compliance with the conditions of supervision if there was no violation of the conditions of supervision.

(3) No earned-discharge credits may accrue for a calendar month in which a violation report has been submitted, the offender has absconded from supervision, the offender is serving a term of imprisonment in a technical violation center, or for the months between the submission of the violation report and the final action on the violation report by the court or the board.

(4) Earned-discharge credits shall be applied to the sentence within thirty (30) days of the end of the month in which the credits were earned. At least every six (6) months, an offender who is serving a sentence eligible for earned-discharge credits shall be notified of the current sentence discharge date.

(5) Once the combination of time served on probation, parole or post-release supervision, and earned-discharge credits satisfy the term of probation, parole, or post-release supervision, the board or sentencing court shall order final discharge of the offender. No less than sixty (60) days prior to the date of final discharge, the department shall notify the sentencing court and the board of the impending discharge.

(6) The department shall provide semiannually to the Oversight Task Force the number and percentage of offenders who qualify for earned discharge in one or more months of the year and the average amount of credits earned within the year.

SOURCES: Laws, 2014, ch. 457, § 55, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the first sentence of subsection (2) by substituting "offender's sentence" for "offenders sentence" and deleting "established in this act" from the end of the sentence. The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 47-7-47. Earned probation program; restitution to crime victim.

JUDICIAL DECISIONS

3. Jurisdiction.

Based on the circuit court's failure to retain sentencing jurisdiction pursuant to Miss. Code Ann. § 47-7-47, its implied attempt to impermissibly delegate its authority to suspend part of the prisoner's 16-year sentence, and the fact that he did not have a revocation hearing, the circuit court's sentence was impermissibly indeterminate. Graham v. State, 85 So. 3d 860

(Miss. Ct. App. 2011), vacated by, remanded by 85 So. 3d 847, 2012 Miss. LEXIS 190 (Miss. 2012).

§ 47-7-49. Creation of community service revolving fund; payments by offender on probation, parole, earned-release supervision, post-release supervision, or earned probation; disposition of payments; time limit on payments [Repealed effective June 30, 2015].

(1) Any offender on probation, parole, earned-release supervision, post-release supervision, earned probation or any other offender under the field supervision of the Community Services Division of the department shall pay to the department the sum of Fifty-five Dollars ($55.00) per month by certified check or money order unless a hardship waiver is granted. An offender shall make the initial payment within thirty (30) days after being released from imprisonment unless a hardship waiver is granted. A hardship waiver may be granted by the sentencing court or the Department of Corrections. A hardship waiver may not be granted for a period of time exceeding ninety (90) days. The commissioner or his designee shall deposit Fifty Dollars ($50.00) of each payment received into a special fund in the State Treasury, which is hereby created, to be known as the Community Service Revolving Fund. Expenditures from this fund shall be made for: (a) the establishment of restitution and satellite centers; and (b) the establishment, administration and operation of the department's Drug Identification Program and the intensive and field supervision program. The Fifty Dollars ($50.00) may be used for salaries and to purchase equipment, supplies and vehicles to be used by the Community Services Division in the performance of its duties. Expenditures for the purposes established in this section may be made from the fund upon requisition by the commissioner, or his designee.

Of the remaining amount, Three Dollars ($3.00) of each payment shall be deposited into the Crime Victims' Compensation Fund created in Section 99-41-29, and Two Dollars ($2.00) shall be deposited into the Training Revolving Fund created pursuant to Section 47-7-51. When a person is convicted of a felony in this state, in addition to any other sentence it may impose, the court may, in its discretion, order the offender to pay a state assessment not to exceed the greater of One Thousand Dollars ($1,000.00) or the maximum fine that may be imposed for the offense, into the Crime Victims' Compensation Fund created pursuant to Section 99-41-29.

Any federal funds made available to the department for training or for training facilities, equipment or services shall be deposited into the Correctional Training Revolving Fund created in Section 47-7-51. The funds deposited in this account shall be used to support an expansion of the department's training program to include the renovation of facilities for training purposes, purchase of equipment and contracting of training services with community colleges in the state.

No offender shall be required to make this payment for a period of time longer than ten (10) years.

(2) The offender may be imprisoned until the payments are made if the offender is financially able to make the payments and the court in the county where the offender resides so finds, subject to the limitations hereinafter set out. The offender shall not be imprisoned if the offender is financially unable to make the payments and so states to the court in writing, under oath, and the court so finds.

(3) This section shall stand repealed from and after June 30, 2015.

SOURCES: Laws, 1979, ch. 462, §§ 1-3; brought forward, Laws, 1981, ch. 465, § 114; Laws, 1981, ch. 543, § 1; Laws, 1982, ch. 431, § 5; Laws, 1983, ch. 435, § 8, ch. 545, § 4; reenacted and amended, Laws, 1984, ch. 471, § 124; reenacted, Laws, 1986, ch. 413, § 124; Laws, 1986, ch. 426; Laws, 1990, ch. 509, § 16; Laws, 1991, ch. 408, § 1; Laws, 1993, ch. 335, § 1; Laws, 1994, ch. 317, § 1; reenacted and amended, Laws, 1995, ch. 538, § 1; Laws, 1995, ch. 596, § 12; Laws, 1995, ch. 621, § 2; Laws, 1996, ch. 376, § 1; Laws, 1996, ch. 379, § 2; Laws, 1996, ch. 474, § 2; reenacted and amended, Laws, 1997, ch. 366, § 1; Laws, 1998, ch. 463, § 1; Laws, 1999, ch. 541, § 1; Laws, 2001, ch. 572, § 1; reenacted and amended, Laws, 2002, ch. 448, § 1; reenacted and amended, Laws, 2002, ch. 624, § 8; Laws, 2003, ch. 412, § 1; Laws, 2004, ch. 444, § 1; Laws, 2005, ch. 372, § 1; Laws, 2006, ch. 381, § 1; Laws, 2008, ch. 328, § 1; Laws, 2010, ch. 404, § 1; Laws, 2012, ch. 385, § 1, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment substituted "into" for "in" following "deposited" in the first sentence of the second and third paragraphs of (1); and extended the repealer provision from "June 30, 2012" to "June 30, 2015" at the end of (3).

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